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ABSTRACT

This collection of lesson plans presents ideas for educators and persons in the law and justice community to teach young people about the Bill of Rights. The lesson plans are: "Mindwalk: An Introduction to the Law or How the Bill of Rights Affects Our Lives"; "Bill of Rights Bingo"; "The Classroom 'Constitutional Convention': Writing A Constitution for Your Class"; "Rewriting the Bill of Rights in Everyday Language"; "If James Madison Had Been in Charge of the World"; "Ranking Your Rights and Freedoms"; "Photojournalism and the Bill of Rights"; "Freedom Challenge"; "Do God and Country Mix? The Free Exercise Clause and the Flag Salute"; "Religion and Secular Purpose"; "A Mock Supreme Court Hearing: Lyng v. Northwest Indian Cemetery Protective Association"; "Away with the Manger"; "Choose on Choice: Pennsylvania's School Choice Legislation and the Separation of Church and State"; "An Impartial Jury: Voir Dire and the Bill of Rights"; "Do You Really Need a Lawyer? The Sixth Amendment & the Right to Counsel"; "From Brown to Bakke: The 14th Amendment"; "Drawing on Your Rights"; and "Bill of Rights Mock Trial." Each lesson contains the lesson title, an overview, grade level, goals, a list of materials, possible uses of outside resources, procedures/activities, and reflections on the lesson. (DB)

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TEMPLE-LEAP
PENNSYLVANIA LAW-RELATED EDUCATION PROJECT
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THE BILL OF RIGHTS - ALIVE!

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THE BILL OF RIGHTS - ALIVE!

This collection of lesson plans was prepared by the staff of the Law, Education and Participation Project of Temple University School of Law (Temple-LEAP) in cooperation with educators and lawyers throughout Pennsylvania. The lessons were designed after a Bill of Rights Institute, held in August 1991, as part of a year-long educational project funded by the Commission on the Bicentennial of the United States Constitution.

The aim of these lessons is to provide educators and their partners from the law and justice community with interesting and challenging ideas for teaching young people about the Bill of Rights. It is our hope that the recipients of this publication will experiment with these lessons in classrooms throughout the Commonwealth, in order to help students learn the fundamental values of citizenship and understand the critical role the Bill of Rights plays in the daily lives of citizens of the United States.

Temple-LEAP is grateful to the Pennsylvania Trial Lawyers Association (PATLA), both for their financial support of the printing of these lessons, and for the time and interest of many of their members in personally sharing these resources with their local schools. The members of PATLA are valued partners in helping Temple-LEAP keep the Bill of Rights alive for Pennsylvania school children.

Please contact Temple-LEAP for copies of a lesson sampler or for additional copies of the full collection of lessons.

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The Bill of Rights - Alive!

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Bill of Rights Lesson Plan Format

Some of the lessons are short and can be completed in one class period. Other lessons are longer and may take more class time. Each lesson contains all of the information you will need to plan for and conduct a successful exercise. The format for the Bill of Rights lesson plans is outlined below:

LESSON TITLE:

LESSON OVERVIEW: A summary of the substantive content of the lesson, including a brief description of the instructional method or class activity is detailed here. This statement explains why this content should be taught and one or two suggestions as to where it might fit within the curriculum. If students require previous understanding or knowledge before engaging in this lesson activity, it is addressed in this section. If this lesson is adapted from previously published material, the origin of the plan is explained.

GRADE LEVEL:

GOALS: The statement of goals covers the knowledge and skills to be addressed.

MATERIALS: This section provides a listing of the resources necessary to teach the lesson, including art supplies and student handouts which are attached to the lessons.

OUTSIDE RESOURCES: This section lists community resource persons who might be invited to assist with this lesson. It is important to use lawyers, police, court personnel and others who have daily experience with the issues addressed. All the research on law-related education emphases the critical role played by involving outside resource persons in the lesson. No matter how much information and background material a teacher can gather, there is no substitute for the experience of community resource persons and their ability to keep up to date on the ever changing law and legal system.

PROCEDURES/ACTIVITIES: These are suggested (and tested) procedures which can be used in presenting the lesson. They are presented in a step-by-step description of what the teacher must do to accomplish the goals of the lesson. The Procedures/Activities section reflects a logical sequence of explanation and activities and presents manageable classroom techniques. This section might include ideas for preinstructional preparation; tips which might facilitate the actual instruction of the lesson; additional ideas for debriefing; and other methods for teaching the content.

REFLECTIONS ON THE LESSON: Teachers' insights gained from field-testing the lesson activity are presented in this section. Some methods are suggested which the teacher might employ to evaluate student achievement while students are participating in the lesson's activities.

MINDWALK: AN INTRODUCTION TO THE LAW OR HOW THE BILL OF RIGHTS AFFECTS OUR LIVES

LESSON OVERVIEW:

This lesson demonstrates the many ways in which the law touches our lives. This lesson will show students some of the many regulations that affect their lives and the importance of knowing about them. It seeks to impress on the students the idea that the law can affect every aspect of a person's life, no matter what the subject or activity. It can be used as an introductory lesson to any area of the law being taught.

The lesson is a classic law-related education exercise that has been adapted in hundreds of ways by different educators.

GRADE LEVEL:

This lesson is appropriate for any grade level where the students are able to understand the nature of the activities discussed which are affected by the law.

GOALS:

As a result of this lesson, students will be able to:

1. Recognize the influence of laws on daily life;
2. Learn that laws have a reason; that they are made not only to control social behavior but also to regulate and protect citizens; and
3. Identify some parts of the Bill of Rights.

MATERIALS:

"Ten Things I'd Rather Be Doing Now Instead of This" is provided for use with the ***Mindwalk - With the Bill of Rights*** alternative.

OUTSIDE RESOURCES:

An attorney would be the best resource person to use in discussing how the law affects our everyday lives. He or she could explain that the first job of an attorney is to evaluate a client's problem and determine what law applies.

PROCEDURES/ACTIVITIES:

Classic Mindwalk exercise

☞ Tell students that you are going to narrate a "story" and that they should stop your narration when they think you have mentioned something that pertains to the law. Begin to narrate your typical daily activities. For example, "This morning, I woke up at 6:00 a.m. I took a bath, got dressed, ate a breakfast of cereal and coffee. I got in my car and drove to school (or office). I picked up my paycheck, etc."

The students should have stopped you at a number of places to mention points such as the following:

1. Your name is a legal device that cannot be changed without court approval.
2. Time is regulated by law. The official clock in Washington, D.C. is set in accordance with Greenwich Mean Time.
3. Water for bathing is inspected by city officials and must meet health, safety and environmental regulations enforced by local and national governmental agencies.
4. Clothing and furniture must have the contents and cleaning instructions listed on a label.
5. Cereal boxes are required by law to list the ingredients. Milk must be pasteurized and meet health standards. The price of milk is often regulated, too.
6. Cars must have safety and pollution control devices that are regulated by law. The car must be licensed and insured.
7. Drivers must be licensed and must obey traffic laws.
8. Streets are built and maintained under standards regulated by law.
9. Income tax and social security taxes are withheld from paychecks by law.

As an extension of the mindwalk exercise, you might ask participants to generate a list of all the legal documents they will be required to have during their lifetimes. Among them could be included:

- birth certificate
- school registration/identification card
- driver's license
- graduation diploma/transcript
- marriage license
- social security card
- draft registration
- income tax return
- passport
- work permit
- rental/lease agreement
- mortgage or other loan papers

Mindwalk - With the Bill of Rights

☞ Distribute, "Ten Things I'd Rather Be Doing Now Instead of This". Ask students to list the ten things they would rather be doing instead of listening to you (or sitting in class). Brainstorm a master list or ask students to offer the most interesting (or fun) alternatives to this class problem. Have students discuss the master list. Examine if these activities have any connection with the first ten amendments. Eventually, ask the class if they can identify any listed activity with no connection to the Bill of Rights. After the master list is exhausted, you may ask for substitute activities: Tell students, "The goal is it create a list of activities you would rather be doing which have no possible connection or relevance to the Bill of Rights." Finish by challenging students to come up with any action they can think of that has no constitutional ramifications.

In order to make this lesson more challenging for competitive students, you might create teams and develop a scoring system. When a student from one team spots an activity as correctly relating to the Bill of Rights and amendments he/she is referring to, the team might receive one full point. If the student is able to spot the activity but is unable to give an adequate explanation as to how it is affected by the Bill of Rights, the team might receive only one-half of a point. At the end of the class, the team with the most points (a scorekeeper can be assigned to the blackboard) wins. For younger groups, it might be possible to use some sort of sounding device (a bell) for the students to "ring in" when they want to answer a question. The teams might be selected randomly by picking from a hat (a blue team would consist of all of the students that picked a piece a blue paper from the hat, red for the red team, yellow for the yellow team, etc.) or you might group students to get a specifically desired mix.

Mindwalk - Through the Daily Newspaper

☞ Divide the class into small groups of 3-4 students each. Distribute newspapers and a magic marker to each group. Give students ten minutes to circle all the law-related articles they can identify. The goal is to build a master bulletin board of law-related articles with nominations from each group. In turn, each group presents and explains a law-related article. The other groups may challenge the nomination contending that the article is not law-related. The teacher or resource person rules on all challenges. The group who loses a challenge also loses a nomination turn.

Mindwalk - The First (and other) Amendments Alive in the Daily News

☞ Do the same activity as described in the Newspaper Mindwalk but challenge the students to identify articles related to the Bill of Rights. In nominating an article to the master bulletin board, the group must identify the amendment involved. Any other group may challenge the nomination as not related to the Bill of Rights or that the identification of the amendment involved was wrong. The articles are placed on a bulletin board by amendment. The first nomination for a particular amendment might earn the group double points in a contest.

REFLECTIONS ON THE LESSON:

This lesson can be used to suit the needs of the particular class you are teaching. While teams and a scoring contest may be very effective for one class, it may be too disruptive for others. It is the teacher's or visiting attorney's task/challenge to support each activity as relating to the law. There is virtually no activity which does not relate in some way to the law. The teacher and resource person should recognize that the students may be able to find connections to the law that are difficult to spot. Always make sure the students have an opportunity to find the legal connection; sometimes they will find connections to the law you will miss.

The "Mindwalk - Through The Daily Newspaper" and "Ten Things I'd Rather Be Doing Instead of This" are the opening acts for many courses, from elementary school to college. "It's great, informative, interactive and sets the tone I seek," reports a professor who has taught courses at the Temple University's School of Law and School of Business and Management.

Ten Things I'd Rather Be Doing Now Instead of This....

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

I know what
I'd rather be doing.
You bet!

BILL OF RIGHTS BINGO

LESSON OVERVIEW:

This lesson plan teaches students about the rights secured in the Bill of Rights by giving them examples of those rights as they are encountered in the students' daily lives. The Bingo game allows for an energetic activity that leads into a discussion of the rights.

GRADE LEVEL:

This lesson is appropriate for upper elementary and secondary school levels.

GOALS:

As a result of this lesson, students will be able to:

1. Think about the role of the Bill of Rights in daily life; and
2. Explore the rights secured by the Bill of Rights.

MATERIALS:

Bill of Rights Bingo Sheet
Bill of Rights Bingo Possible Answers

OUTSIDE RESOURCES:

None necessary, but an attorney to comment on the exercise or answer questions would enrich the lesson.

PROCEDURES/ACTIVITIES:

☞ Explain the rules of the Bingo game to the students. You may play many ways, but the easiest way to use this lesson is to have the students follow these rules:

- ⇒ The winner must have every block signed by a different member of the class for whom that item is true;
- ⇒ No one may sign more than one square on each sheet; and
- ⇒ Everyone, including the teacher and attorney, participates!

☞ Once you have a "winner", (a good prize for the winner is a copy of the Constitution) the main part of the lesson begins. Go through each item on the chart and ask the students what connections they see between the activity on the sheet and the Bill of Rights. A sample list of possible connections is included with this lesson.

REFLECTIONS ON THE LESSON:

The class may be loud during the initial exercise. There may also be some hesitancy by the students at first to get moving. The teacher might wish to start the contest by moving around the room and signing different students' bingo sheets to give the students a start on the game.

BILL OF RIGHTS BINGO

witnessed a crime or knows someone who witnessed a crime	has a copy of the Bill of Rights at home	owns something that locks
reads a newspaper regularly	believes in capital punishment	has a family member who owns a gun or who has kept a gun in the house
family rents or owns a home	**Wild Card Block**	signed a petition
has a social security number	would support a law that drug "Kingpins" should not be released on bail	knows someone who needed a lawyer
knows anyone who served on a jury	knows someone who looked in a student's purse, locker or pockets without the student's permission	attended a church, synagogue, mosque or temple

BILL OF RIGHTS BINGO POSSIBLE RESPONSES

A few of the possible responses while playing Bill of Rights Bingo are shown below. This is only a start. Your class will probably find many other connections.

Witnessed a crime: Sixth Amendment, Right to confront witnesses.	Has a copy of the Bill of Rights at home: Often found in reference, history or law books or an encyclopedia. Fits all amendments.	Something that locks: Home safe, fire box, safety deposit box, diary; Fourth Amendment, Search and Seizure Issues.
Reads a newspaper regularly: First Amendment, Freedom of the press.	Believes in capital punishment: Eighth Amendment, Is the death penalty cruel and unusual punishment?	Family member owns a gun: Second Amendment, Right to bear arms.
Family rents or owns a home: Third Amendment, Quartering of troops, Implied privacy protection.	**Wild Card Block** Anything can fit here, but make students explain.	Signed a petition: First Amendment, Right to petition the government.
Has social security number: Ninth Amendment, Rights retained by the people, Privacy questions.	Would support a law to deny bail for drug "Kingpins": Eighth amendment, right to bail.	Family has hired a lawyer: Sixth Amendment, Assistance of counsel in criminal prosecutions. Fifth Amendment, Miranda warnings by police.
Family member served on a jury: Sixth & Seventh Amendments, Trial by jury.	Knows someone who looked in a student's purse, locker or pockets without the student's permission: Fourth Amendment, Search and seizure issues.	Attended a church, synagogue, mosque or temple: First amendment, Right of free exercise of religion.

THE CLASSROOM "CONSTITUTIONAL CONVENTION": WRITING A CONSTITUTION FOR YOUR CLASS

LESSON OVERVIEW:

This lesson is designed to introduce students to some of the basic concepts of the Bill of Rights by writing a constitution for their class. This lesson will familiarize students with rights and responsibilities as they relate to their lives in the classroom. Comparison will be made between the classroom constitution and the United States Constitution.

GRADE LEVEL:

This lesson was designed for first grade but may be adapted for any grade.

GOALS:

As a result of this lesson, students will be able to:

1. Understand that they have classroom rights and responsibilities;
2. Identify their classroom rights and responsibilities;
3. Emerge from their "constitutional convention" with practiced listening, reasoning, writing and group work skills;
4. Become familiar with the terms "rights" and "responsibilities" in a wider context such as their neighborhood and school;
5. Understand the importance of a written constitution; and
6. Compare their classroom rights and responsibilities with the rights and responsibilities found in the Bill of Rights.

MATERIALS:

Large flip chart paper and markers for writing the classroom constitution
A copy of the Bill of Rights Handout for each student

OUTSIDE RESOURCES:

The school principal may visit the class to present and discuss the school's rules. The principal should point out the students' rights and responsibilities found in the school's rules and procedures and describe how the rules and procedures were made.

PROCEDURES/ACTIVITIES:

☞ The principal (teacher) may read a directive that the class draft a class constitution. When completed, it should be presented to the school administration and displayed in the classroom.

☞ Discuss with the class the importance of having rules. Describe what might happen if there were no rules in the school, on the playground, at the zoo, at the movies and on the freeway. Challenge students to provide other examples.

☞ List classroom rights suggested by students.

☞ Discuss the responsibilities the students have to their classmates and teacher.

☞ Create a class list of rights and responsibilities. Tell the students that they are to write a "Class Constitution" that will be displayed in the classroom. Have students sign the document. Is the class constitution more important because it is written? Signed? Why?

☞ Compare the classroom constitution to the Bill of Rights at an age appropriate level.

☞ Make copies of the class constitution for students to take home to parents.

REFLECTIONS ON THE LESSON:

This lesson fits easily into the curriculum in September when class and school rules are usually discussed. This lesson may be completed in a week. Before or after writing the classroom constitution, students might draw a picture of a right or responsibility they have in the classroom as an additional activity.

REWRITING THE BILL OF RIGHTS IN EVERYDAY LANGUAGE

LESSON OVERVIEW:

This lesson explores the meaning of the Bill of Rights by having students rewrite the language of the amendments in their own words.

GRADE LEVEL:

This lesson is appropriate for secondary students. It would make an excellent cross-age lesson with high school students teaching younger students to examine the language of the Bill of Rights.

GOALS:

As a result of this lesson, students will be able to:

1. Explain each of the first ten amendments in their own words;
2. Cite examples of how each amendment could affect everyday life; and
3. Experience and learn from group dynamics, collaborative learning and vocabulary exercises.

MATERIALS:

Copies of the Bill of Rights
Poster paper and markers for producing the final product of the lesson
Model exercises for teacher's use
Fourth Amendment rewritten by a police officer

OUTSIDE RESOURCES:

Any law and justice professional could add to this lesson. Depth could be added to this lesson by asking, for example, a trial lawyer to explain what the trial amendments mean to him or her. Note the Fourth Amendment written in the everyday language of a police officer.

PROCEDURES/ACTIVITIES:

☞ Divide the class into groups of three to five students, assigning an amendment to each group. Give each group markers and poster paper. Instruct each group to write the original language on the poster and then add the group's plain language version immediately below. The Illinois State Bar Association model provides an example of how the finished product might appear.

☞ A variation on this activity is to take an amendment that the class has studied in depth and have the class write out a full explanation of what the amendment really means today. The example, the Fourth Amendment, (police version) provided here was drafted by a police officer and reflects his interpretation of the law applying U.S. Supreme Court's criminal procedural rulings he frequently encounters. Analyzing that interpretation is a valuable lesson in understanding how the Bill of Rights is viewed today.

REFLECTIONS ON THE LESSON:

This lesson provides an excellent means of charting students' understanding of the meaning of the Bill of Rights over a period of time. Students can add to their posters throughout the course of study. The lesson also helps students understand the basic language and concepts of the first ten amendments.

An interesting variation of this lesson is to invite senior citizens to the class to be interviewed by students as part of a cross generational study of the Bill of Rights.

THE BILL OF RIGHTS IN EVERYDAY LANGUAGE

Reprinted with permission from the Illinois State Bar Association

The Bill of Rights in "plain language" does not adequately reflect the document's full content. It is an abridgment to make constitutional rights understandable to grade school children and to facilitate teaching concepts. The actual language of the Bill of Rights is provided, set off by stars, for your information.

1. Congress may not make rules to change freedom of religion, freedom of the press, freedom of speech, or the right of people to come together in a peaceful way or to send petitions to their government.

   ★ ***Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*** ★

2. The people have the right to keep and bear arms.

   ★ ***A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.*** ★

3. During peacetime, the government cannot make citizens put up soldiers in their homes.

   ★ ***No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.*** ★

4. People or their homes may not be searched unreasonably.

   ★ ***The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*** ★

5. Persons accused of a crime may not be forced to give evidence against themselves. Their lives, freedom, and property may not be taken from them unfairly. If the government takes a person's property for public use, it must pay the owner for it. A person may not be put on trial twice for the same crime.

★ *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.* ★

6. People accused of serious crimes have the right to a speedy and public trial by a jury. They must be told what they are accused of. They have the right to have a lawyer help them. They have the right to see and question those who accuse them.

★ *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.* ★

7. In most non-criminal cases, there must be a right to a jury trial.

★ *In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.* ★

8. Punishment may not be cruel and unusual.

★ *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.* ★

9. & 10. If the Constitution does not give a certain right to the U.S. Government, and also does not forbid a state government to have that right, then the states and the people have it.

★ *9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.* ★

★ *10. The power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the State's respectively, or to the people.* ★

The IV Amendment
{Police Version}

The right of the people to be secure in their persons, houses (including chattel), papers, vehicles, conversations, and effects, against UNREASONABLE searches and seizures, shall not be violated except where there is no reasonable expectation of privacy, where the contraband, fruits of a crime, items that are criminally possessed, evidence of a crime or items used in the commission of a crime are in plain view (even when viewed with optical aids), or in an open field, or in a public place, or in a jail, or abandoned, or where the person has no standing to expect privacy. No Warrant shall issue, but upon WRITTEN and recent probable cause when considering the "totality of the circumstances," supported by Oath or affirmation, that may include confidential sources and hearsay evidence, and when approved by the District Attorney, and VERY particularly describing the place to be searched, and the persons or things to be seized, and which must include: the time and date of the issuance, the name of the issuing authority and the official seal, the name and address of the servers, the name of the owner, occupant, or possessor of the place to be searched, the crime which has been committed, and that the items to be seized are located on the person to be searched or at the place to be searched. No Warrant shall be needed in an emergency situation, or for an officer's protection, or during a frisk, or after chasing fleeing suspects, or incident to a lawful arrest, or when in hot pursuit, or when the destruction of evidence is imminent, or during border inspections, or as a condition of parole or probation, or with consent. Search Warrants shall be served within two days of issuance, and reasonable effort must be made to knock and announce the purpose and authority of the search prior to entry, and no search shall be conducted at nighttime unless absolutely necessary. A copy of the Warrant must be left, and a receipt must be issued, upon the completion of the search, even if nothing was seized, and even if there is no one there to accept the copy and the receipt. If probable cause is found to be lacking, then ALL items seized, and ALL other evidence and information gathered as a result of the items seized, shall be excluded from further criminal proceedings, even if the mistake was made in "good faith," or the evidence would have inevitably been discovered.

By Sgt. Brian McNeill
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IF JAMES MADISON HAD BEEN IN CHARGE OF THE WORLD

LESSON OVERVIEW:

This lesson combines a whole language approach with the study of the Bill of Rights. Students get the opportunity to develop lists of rules for the world after reading (or being read) a selection from E. B. White's children's story, Stuart Little. Using a poem by Judith Viorst entitled "If I Were in Charge of the World," students work together to create group poems of their rules for the world. The class then rewrites the Bill of Rights in the same poetic structure.

GRADE LEVEL:

This lesson was originally designed for third graders but it is adaptable for all elementary grade levels.

GOALS:

As a result of this lesson, students will be able to:

1. Identify the ten amendments that make up the Bill of Rights;
2. Analyze what makes a rule or law effective; and
3. Recognize that rights have attendant responsibilities.

MATERIALS:

A copy of Stuart Little
Handout: "If I Were in Charge of the World" by Judith Viorst
Flip chart paper
Copy of the Bill of Rights

OUTSIDE RESOURCES:

Any law and justice professional would add to this lesson. The lesson also offers interdisciplinary teaching opportunities.

PROCEDURES/ACTIVITIES:

☞ Have students read (or read to them) the chapter from Stuart Little entitled "The Schoolroom." List Stuart Little's rules and discuss whether or not they are "good" rules. Discuss what makes a rule "good." List the characteristics of a good rule.

☞ Break students into groups of three to five and have them create lists of rules for the world on the flip chart. Discuss the rules and analyze whether the rules appear to be effectively written. Compare them to the Bill of Rights. How are they alike? How are they different?

☞ Give Handout, "If I Were In Charge of the World" to the students. Direct the student groups to use their lists of rules to create a similar poem.

☞ Have each group read its poem aloud. Ask the students to create a poem from or about the Bill of Rights as a follow-up exercise.

REFLECTIONS ON THE LESSON:

This lesson should result in a wonderful set of poems of rules for the world and the Bill of Rights. You might wish to publish the poems in an edited form so you have a single class product entitled, for example in a third grade class, "If Third Graders Were In Charge of the World." The Bill of Rights poem might use the title of this lesson: "If James Madison Had Been In Charge of the World."

IF I WERE IN CHARGE OF THE WORLD

If I were in charge of the world,
I'd cancel oatmeal,
Monday mornings,
Allergy shots, and also
Sara Steinberg.

If I were in charge of the world
There'd be brighter night lights,
Healthier hamsters, and
Basketball baskets forty-eight inches lower.

If I were in charge of the world
You wouldn't have lonely.
You wouldn't have clean.
You wouldn't have bedtimes.
Or "Don't punch your sister."
You wouldn't even have sisters.

If I were in charge of the world
A chocolate sundae with whipped cream and nuts
would be a vegetable.
All 007 movies would be "G".
And a person who sometimes forgot to brush,
and sometimes forgot to flush,
Would still be allowed to be
In charge of the world.

Judith Viorst
People and Other Aggravations
New York: World Publishing Co., 1971

RANKING YOUR RIGHTS AND FREEDOMS

LESSON OVERVIEW:

This lesson is an to introduction to a unit of study on the Bill of Rights. Each student is asked to "rank order" each right or freedom according to his/her perception of what is the most important right to the least important right. Students or the teacher might save these rankings of rights and freedoms until the end of the Bill of Rights unit of study. Students can then complete the same exercise and compare their first rankings with their later selections, discussing which choices, if any, have changed and why.

GRADE LEVEL:

This lesson is appropriate for students in fifth through twelfth grade.

GOALS:

As a result of this lesson, students will be able to:

1. Clarify their thoughts regarding the rights and freedoms often taken for granted in our society;
2. Explore and discuss the concept of fundamental rights found in the Bill of Rights; and
3. Experience oral advocacy and practice reasoning and listening skills.

MATERIALS:

Rights and Freedoms
A Visitor From Outer Space

OUTSIDE RESOURCES:

Attorneys are excellent resources for this lesson. Any law or justice professional would add to the lesson by sharing his or her view of the relative value of each amendment based on their experience.

PROCEDURES/ACTIVITIES:

☞ Explain to the students that they may be aware of many of the rights and freedoms enjoyed by United States citizens. Now they will have an opportunity to decide which rights and freedoms are the most important to them and the least important using reasoning skills and oral advocacy.

☞ Give students the handout, "Rights and Freedoms." Have each student write his/her name at the top. Read the directions together.

☞ Rank the rights and freedoms listed.

☞ Determine from students' responses (e.g., a show of hands) which rights and freedoms they believe to be most important. Ask students to give reasons for their selection of the rights and freedoms they deemed most or least important.

☞ Collect the handout, "Rights and Freedoms", and save them until the end of the unit on the Bill of Rights.

☞ After the students have studied the Bill of Rights repeat this Rank-Order exercise. Hand back their first ranking sheets and ask students if anyone has changed his/her opinion. Discuss student responses, focusing on the reasons given by students for these responses.

REFLECTIONS ON THE LESSON:

This is a simple but effective method to begin a class discussion on the Bill of Rights, as well as, on values of individual rights versus the interests of the majority. A popular variation involves instructing students that each may only pick one amendment to save. Students then are asked to explain their selections. Another variation is to use the Constitutional Rights Foundation exercise "A Visitor From Outer Space."

This lesson could be repeated with a number of different justice system resource persons, comparing the results at the end of the lesson series. Or a questionnaire could be prepared by the class, sent to various justice resource persons and the responses analyzed and compared. Would a prosecutor and reporter make similar selections?

"A Visitor from Outer Space" works well with the "visitor" in costume, to present the space visitor's speech and conduct the lesson.

RIGHTS AND FREEDOMS

Listed below are some, but not all, of the fundamental rights found in the first ten Amendments to the United States Constitution (Bill of Rights). Please rank them 1 through 15 in order of importance to you (1 is most important, 15 is least important). If you think the most important right is the Right To Bear Arms, then you should fill in the blank beside that right (D) with 1.

___ A) Right Protecting Against Unreasonable Search And Seizure

___ B) Right To Trial By Jury In Criminal Cases

___ C) Right To Trial By Jury In Civil Cases

___ D) Right To Bear Arms

___ E) Right To Assemble Peacefully

___ F) Right To Protection From Cruel And Unusual Punishment

___ G) Right To Freedom Of Speech

___ H) Right To A Lawyer In Some Cases

___ I) Right To Have A Lawyer During Police Questioning

___ J) Right To Freedom Of Religion

___ K) Right To Privacy

___ L) Right Protecting Against Self-Incrimination

___ M) Right To Freedom Of Press

___ N) Rights Not Listed In The Bill Of Rights That Belong To The People

___ O) Right To Keep Government From Taking Your Property Without Paying You

A VISITOR FROM OUTER SPACE

You are quietly watching television with your family when a special news bulletin comes over the TV station. You immediately see that this is not the normal type of news bulletin because there is what looks like a very strange creature on the screen--the only thing which is familiar is that he is speaking in English. He tells you that he and his people have gained control over all of the communications networks in the United States and that everyone had better pay attention to what he has to say. You change the channel, and just as he said, there he is on every station. He begins to speak very loudly and you gather your family around because you are beginning to worry about what he is going to do. His speech is as follows:

> "My name is STHGIR and I am from the planet NOITUTITSNOC in another galaxy where the inhabitants are far superior to the beings on this planet EARTH. Just as we have gained control over the communications of the United States, we have the ability to take complete control over every one of your lives. We do not want a war between our planet and yours, but we do want to control some things so that we can live in peace and harmony with you. We have looked at some of your laws and the way your government operates and have found it gives too much freedom to the individual. Therefore, we are going to conduct a survey to try and arrive at a decision in which both you and I are happy. As I have said, I do not want to take everything away from you--but I can't allow you to continue to live as you have in the past. Therefore, I am giving you a list of ten of the rights which you now have according to your Constitution. You are to look over the list of ten of the rights which you now have according to your Constitution. You are to look over the list and decide which of the ten are most important to you. I will allow you to keep FIVE of the ten rights--the five which get the most votes from all citizens of the United States. You are to read the following rights in the order in which you would give them up and 1 being the one you would give up last, and 10 being the one you would give up first. After you have completed your ranking, you will receive further instructions."

______ Right to bear arms
______ Right to freedom of speech
______ Right to legal counsel
______ Right to protection from cruel and unusual punishment
______ Right to freedom of press
______ Right to a jury trial
______ Right to freedom of religion
______ Right to peacefully assemble
______ Right to privacy
______ Right to protecting self-incrimination

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Constitutional Rights Foundation, Chicago

PHOTOJOURNALISM AND THE BILL OF RIGHTS

LESSON OVERVIEW:

This lesson affords the students the opportunity to apply the techniques of photojournalism to express the rights, freedoms and responsibilities inherent in the Bill of Rights.

GRADE LEVEL:

This lesson is appropriate for students in Grade 5 and above.

GOALS:

As a result of this lesson, students will be able to:

1. See the many ways in which the Bill of Rights affects the lives of people in their own community;
2. Use photographs to convey an idea in a creative, non-verbal way; and
3. Create a photographic exploration of the Bill of Rights.

MATERIALS:

Examples of pictures with a message (taken from a newspaper, magazine,
a LIFE compilation, or books on photojournalism.)
Newspapers and magazines for students to look through and select photographs
Access to a camera, film and developing (for variations of this lesson)

OUTSIDE RESOURCES:

A photographer from a local newspaper would assist in the presentation of this lesson. A teacher or student from a high school or a parent who is knowledgeable about photography or video techniques also would be a big help to an elementary teacher using this lesson. Traditional resource persons (law and justice professionals) might be used to comment on the rights showcased in the finished products of the students completing this lesson.

PROCEDURES/ACTIVITIES:

☞ Students are shown examples of pictures in which rights and freedoms found in the Bill of Rights are depicted. Students are asked to interpret the story of each picture.

☞ A speaker or teacher highlights the important points in capturing a scene in a picture so that the picture tells a story. Students might look through newspapers and magazines for pictures that capture a story. Students might also be led to examine pictures that illustrate a concept, such as freedom or privacy.

☞ In small groups students give ideas for picture possibilities and then share these ideas with the class as a whole.

☞ Each student chooses a topic for a collage of pictures showing rights and freedoms. Possible topics might range from depicting one of the rights or responsibilities of the Bill of Rights to showing how the student feels life would be without the Bill of Rights.

☞ When collages are submitted they should be "published" in some manner. Among the many ways to publish these works of art are the following:

a) Displayed on a bulletin board in the school hallway;
b) Taken to another class to be shown and explained by the creator;
c) Reported in a local newspaper (particularly if a newspaper photographer was the resource person);
d) Displayed in local store windows; and
e) Used to decorate the classroom for a Bill of Rights celebration.

REFLECTIONS ON THE LESSON:

One class as a variation on this lesson used cameras to take original pictures for a class collage. The teacher reported these positive results:

> Students were very excited about using cameras. They became alert to photographic possibilities of signs which expressed opinions, marches for a cause, courts, police activities, various religious practices, a variety of printed materials, and additional freedoms that are enjoyed but not specifically mentioned (9th amendment). In the unit evaluations students wrote:
>
> > I had a lot of fun with this unit. I loved making posters.
> > Now the Bill of Rights means a lot more to me.
> > I got to do projects instead of just reading about it.
> > My favorite part was taking pictures and making a poster.

FREEDOM CHALLENGE

LESSON OVERVIEW:

This lesson is designed to raise and focus student interest in an exploration of the fundamental freedoms found in the Bill of Rights.

GRADE LEVEL:

This lesson, designed for high school students, may be modified for any grade.

GOALS:

As a result of this lesson, students will be able to:

1. Clarify their existing notions about fundamental freedoms; and
2. Identify at least two basic tensions that exist in enforcing fundamental rights.

MATERIALS:

Freedom Challenge Questions

OUTSIDE RESOURCES:

An attorney, judge or political leader would add to the value of this lesson by sharing their views of the Freedom Challenge.

PROCEDURES/ACTIVITIES:

☞ Begin by asking students, "Who believes in freedom?" Tell students that whoever really believes in freedom should stand up. Do not give them copies of "Freedom Challenge Questions" before doing this part of the exercise.

☞ Explain to the students that you will ask a series of questions to the class, one question at a time. If a student answers with a yes, he/she remains standing. If a student answers no, he/she sits down. Begin orally asking questions from the list of "Freedom Challenge Questions."

☞ After a few minutes most of the students will be sitting down. The teacher or resource person should direct some of the particularly difficult questions from the "Freedom Challenge Questions" to the students still standing and ask that each student explain his/her "yes" answers.

☞ Discuss with students their difficulties, if any, in making choices about freedom. Review which questions had a lot of "no" answers with the class.

☞ Briefly introduce the idea of trying to balance freedoms and rights for each individual with the rights and responsibilities of society as a whole. Elicit examples from students.

☞ Now give students copies of the list of "Freedom Challenge Questions" and a copy of the Bill of Rights. Next to each item on the list of "Freedom Challenge Questions" have the students write the number of an amendment (or amendments) that the students believe may pertain to this freedom. Work individually or in small groups. Have the class review answers with the help of the resource person.

REFLECTIONS ON THE LESSON:

This activity is an excellent introduction to a general unit on the Bill of Rights, or to a specific unit on equal protection. This activity can be varied simply by changing the concept to be challenged: equality, integration, law and order, affirmative action, privacy, etc. It is important to make students understand that this lesson focuses on their beliefs as a means to get them to examine some difficult current issues. The lesson is not a factual analysis of the present law. An attorney resource person might provide a factual analysis of the law as a complement to this lesson.

The skills of clearly expressing an idea, defending an idea with reasons and listening to the ideas of others can be taught while using the lesson. Students should understand that this type of discussion is about ideas and should never descend into personal criticism or attacks. Teachers should choose the items on the "Challenge" carefully, with attention to the maturity and sensitivity of the class.

FREEDOM CHALLENGE QUESTIONS

Do you Believe:

- In the Freedom of Speech?
- In the Freedom of Religion?
- In the Freedom of the Press?
- In the Freedom to Assemble or Associate?
- In the Freedom to Petition the Government?
- That it's OK to insult someone?
- That it's OK to insult someone racially?
- That it's OK for the KKK to march in your neighborhood carrying burning crosses and racist signs?
- That it's OK to place a burning cross in your neighbor's yard?
- That it's OK to lie about someone:
    - ⇒ in your class?
    - ⇒ who is running for president?
    - ⇒ who is a famous star on MTV?
- That it's OK to watch pornography?
- That it's OK to order pornography by mail?
- That it's OK to sell pornography?
- That it's OK to produce pornography?
- That it's OK to produce child pornography?
- That it's OK to yell fire in a crowded movie theater?
- In democracy?
- In majority rule?
- In the privacy of your medical records?
- In the privacy of someone's medical records who has AIDS?
- In the privacy of your dentist who has AIDS?
- You would be willing to die for freedom?
- You would kill to protect your own freedom?
- You would kill to protect someone else's freedom?
- You would go to war to protect another country's freedom?
- Children should have freedom?
- You can make a law that will protect everyone's freedom?
- In jailing drug users?
- In jailing drug sellers?
- In jailing someone who gave drugs to your little sister?

DO GOD AND COUNTRY MIX?
THE FREE EXERCISE CLAUSE AND THE FLAG SALUTE

LESSON OVERVIEW:

This lesson addresses the rights of individuals under the free exercise clause of the First Amendment of the U.S. Constitution. The issue is whether the government can force an individual, specifically a student, to do something secular (non-religious) in nature which would violate the individual's genuine religious beliefs. Though the free exercise clause seems mandatory ("Congress shall make no law respecting the free exercise of religion"), the individual's rights are balanced against the interest of the Government. This lesson explores the conflict between religious beliefs and mandatory patriotic displays in school.

GRADE LEVEL:

This lesson is appropriate for high school students.

GOALS:

As a result of this lesson, students will be to:

1. Understand the necessity for religious tolerance in a pluralistic society;
2. Appreciate why the Constitution prohibits the Government from compelling conduct, even patriotic behavior, which may violate a person's religious beliefs; and
3. Employ analytical skills by having them consider whether different types of conduct can be compelled.

MATERIALS:

Thoughts from Justices Frankfurter and Jackson
"How I View the Constitution:
Should the individual be able to follow his/her own religious beliefs?"
Supplemental Information for Lawyers/Teachers

OUTSIDE RESOURCES:

Invite a lawyer, judge, legislator, or religious leader from your community to your class for this lesson. All of these resource persons would add depth to this lesson.

PROCEDURES/ACTIVITIES:

☞ Give students copies of "Thoughts from Justices Frankfurter and Jackson" with the quotes from two famous cases. Discuss for vocabulary and understanding.

☞ Explain to the class that both of these cases involved Jehovah's Witnesses who objected to public regulations that required students to salute the flag. The Jehovah's Witnesses believe that saluting or swearing allegiance to a secular symbol violates Biblical teaching (i.e., 1st Commandment which states "Thou shalt not have false gods before me"). In 1940, the Supreme Court said in the Gobitis case that requiring students to salute the flag did not violate the First Amendment Right To Free Exercise of Religion. Just three years later, the Court overruled Gobitis. In the Barnette case, the Court said that the government had no power to compel flag saluting of any citizen.

☞ Ask students to compare the statements made in the Gobitis and Barnette cases. Some possible questions and likely responses are:

- ★ What is the fundamental difference in the views of Jackson and Frankfurter?
    - ▸ Frankfurter suggests that because flag saluting is political, designed to promote patriotism, you can't get out of it by saying it offends your religious views.
    - ▸ Jackson recognizes the freedom of expression and religious freedom in the First Amendment. A free society cannot tell people what to say or what to believe.
- ★ Why should a public school be particularly careful not to "prescribe what is orthodox?"
    - ▸ Schools represent the state to the children, and children shouldn't learn from the state that they cannot adhere to their religious beliefs freely.
    - ▸ Children may feel peer pressure from other students because the whole class is engaging in a certain activity.

☞ Present students with copies of *"How I View The Constitution: Should The Individual Be Able To Follow His/Her Own Religious Beliefs?"* Ask students to evaluate whether the individual should be allowed to exercise religious beliefs or whether the individual should be compelled to follow the rules of society.

☞ Conduct a class discussion of the exercise. See the "Supplemental Information For Lawyers/Teachers" for details about the cases involved.

REFLECTIONS ON THE LESSON:

This lesson gives the teacher or a resource person a very good opportunity to discuss the concept of *stare decisis* (the court's decision stands). Under this doctrine, the Supreme Court usually follows its earlier decision. Here you have an excellent example where the Supreme Court didn't follow an earlier decision. You might wish to explore with a resource person what might motivate the Supreme Court to overrule its previous holdings. This is an excellent entry into a discussion of the Supreme Court's handling of the abortion issue and a number of other generally debated cases.

At the conclusion of each Supreme Court term, the end of June, the media (print and radio) often discuss major developments and cases decided during the previous year. Participants often include constitutional law professors and journalists who report on the Supreme Court. Copies of those articles, or tapes of those programs, could easily and effectively be incorporated into this lesson.

Thoughts From Justices Frankfurter And Jackson.

"The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities..." Justice Frankfurter, Minersville School District v. Gobitis, 310 U.S. 586, 595-96 (1940).

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein" Justice Jackson, West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

"How I View The Constitution: Should The Individual Be Able To Follow His/Her Own Religious Beliefs?"

Look over the situations below and answer "Yes" or "No".
Can you explain your answer?

		Yes	No	Why?
a.	A Mormon argues that it is his religious duty to marry more than one wife, but if he does so he will be prosecuted for bigamy.			
b.	A Jehovah's Witness is arrested because he covers up the phrase "Live Free or Die" on his New Hampshire license place, saying it violates his religious beliefs.			
c.	A school student refuses to come to a mandatory graduation rehearsal on Saturday because it is her Sabbath and she is not permitted to march in the ceremony.			
d.	An Amish employer refuses to pay social security taxes because his religion requires the community to live self-sufficiently.			
e.	An Amish family does not want to send their 14 and 15 year old children to high school because the Amish believe that high school teaches children about worldly pursuits. Amish emphasize goodness and separate themselves from modern society.			
f.	Some people object to the slogan "In God We Trust." Can they use money without those words on the currency?			
g.	A legislator objects to being required to listen to a morning prayer from the chaplain. Can she challenge this 200 year old practice?			

SUPPLEMENTAL INFORMATION FOR LAWYERS/TEACHERS

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." This supreme law of our country places a restriction on the power of the Government -- federal, state and local -- from taking certain actions. The religion proscriptions of the First Amendment apply as fully to state and local governments as they do to the federal government. The first part of the religion portion of the First Amendment is called the Establishment Clause. This clause means that the government cannot create a national or state religion, as was and is the practice in many countries. The government is not permitted to do anything which has a religious purpose, advances or hinders anything which has a religious purpose, advances or hinders religion, or excessively entangles the Government with religion or religious groups. Lemon v. Kurtzman, 403 U.S. 602 (1971). The second part of the First Amendment, known as the Free Exercise Clause, prohibits the Government from interfering with a person's right to practice his or her religion. Although the language of the Amendment is absolute, the interpretation and meaning of these clauses as passed upon by the judicial system demonstrates that a balancing of interests must occur to determine whether a policy or action of the government violates the Constitution.

Public schools serve a crucial purpose, not only of educating young people in the subjects that will allow them to perform as adults in society, but also in imparting fundamental values necessary to a free society. One of these core values is the "tolerance of divergent political and religious views" tempered by the "consideration of the sensibilities of others." Bethel School District No. 403 v. Fraser, 106 S.Ct. 3159 (1986).

In Minersville School District v. Gobitis, 310 U.S. 586 (1940), the Supreme Court sustained the flag salute requirement in public schools. The Court, just three years later, overruled Gobitis in West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943). In Barnette, the central issue was freedom of expression. The Court refused to inquire into the strength of the Jehovah Witnesses' religious beliefs, and whether they should be exempted from the activity. Instead, the court focused on whether or not the state had the power to make the salute a legal duty. The powerful passage quoted in the handout has been often quoted and relied on in First Amendment cases.

Background and Cases for, "How I View The Constitution: Should The Individual Be Able To Follow His/Her Own Religious Beliefs?"

a. In 1878, a Mormon lost his challenge to a federal law making bigamy a crime in the United States, including the Western territories. Reynolds v. United States, 98 U.S. 145 (1878). The Supreme Court stated that the First Amendment protects religious opinions, but not necessarily religious action. For example, society should not be forced to tolerate human sacrifices simply because it was claimed to be a necessary part of religious worship.

b. The Supreme Court declared that a Jehovah's Witness could not be forced to be a "mobile billboard" for a state's expression that was personally unacceptable to the individual. Wooley v. Maynard, 430 U.S. 705 (1977). Like Gobitis, this was primarily a freedom of expression case. Justice Burger stated that this freedom includes "the right to refrain from speaking at all."

c. The standard to be applied in this type of case is whether there is a compelling state interest that justified infringement of First Amendment rights. In Sherbert v. Verner, 374 U.S. 398 (1963), (employee left her job because it required her to work on the Sabbath and then was denied unemployment benefits because she "voluntarily quit"), the Court said that states cannot deny important benefits to individuals because this may compel them to abandon religious convictions respecting the "day of rest."

d. In U.S. v. Lee, 455 U.S. 252 (1982), the Supreme Court recognized that paying taxes conflicted with the Amish beliefs. But, because the Amish employer had voluntarily entered business, he had to accept the requirements made of all businesses. The legislature made mandatory participation in social security "indispensable" for the system to work financially.

e. Wisconsin v. Yoder, 406 U.S. 205 (1972), was a surprising case that is probably limited in its holding to the Amish or very similar societies. The Supreme Court said that the state could not convict the parents for failure to send their teenagers to high school. The state's interest in compulsory education (preparing intelligent citizens and self-sufficient adults) was not strong enough to compel the parents to give up their religious beliefs. The Amish parents wanted to prepare their children for life in a separated, agricultural community, in accordance with their religious principles. The court did not address the children' right to education or consider if that right to education even exists.

f. The government, in this case, could assert a compelling government interest in having one currency, and that the motto "In God We Trust" is included because it was historically used. Does passing money differ from the "mobile billboard" significantly? See b. above.

g. In Marsh v. Chambers, 463 U.S. 783 (1983), the recitation of prayer by the Nebraska assembly survived an establishment clause challenge because it was "deeply embedded in history and tradition." Should this case have been settled under the Free Exercise Clause? Should the holding in Barnette (flag saluting case) apply equally to adults?

RELIGION AND SECULAR PURPOSE

LESSON OVERVIEW:

This lesson is designed to provide students with a background on the First Amendment and its effect on various religious practices. Students should come to understand that although people have the right to hold any religious belief they desire, the practices of that religion may be restricted by law. A brief summary of the Establishment and Free Exercise clauses is attached to this lesson as a guide for the teacher. Case support for each of the role plays is included in that summary.

GRADE LEVEL:

This lesson is designed for students at the secondary school level.

GOALS:

As a result of this lesson, students will be able to:

1. Achieve a practical understanding of the effects of the Establishment and Free Exercise clauses on today's religious practices; and
2. Establish an understanding of the controversies which may arise from the concept of religious freedom.

MATERIALS:

Student roles for Religion Clauses of the First Amendment
You may wish to create role play cards for this exercise.

OUTSIDE RESOURCES:

A religious leader, perhaps a minister or a rabbi, might serve as an interesting resource person for this lesson. A school principal or solicitor might also add effectively to this lesson by discussing how school policies have been shaped to meet the requirements of the First Amendment religious freedoms. A lawyer could provide more detail and discuss the cases involved.

PROCEDURES/ACTIVITIES:

☞ After discussing the Free Exercise and Establishment clauses of the First Amendment, ask three students in the class to read over the role play descriptions and to act out the role described.

☞ Have the three students, each in turn, petition the government. The three students should present their cases one at a time.

☞ The remaining students in the class should be told that they are the government panel and that they will hear petitions for relief on the issue of religious freedom.

☞ The students serving on the government panel vote on each request as it is presented. The student "counsel" must approve or deny each request based upon the First Amendment as they interpret it.

☞ Review each issue with the class after the petitioning students have presented their cases. Ask students who took opposing sides why they voted the way they did for each case. Be sure to reinforce in each situation whether the problem involves the Establishment or Free Exercise Clauses of the First Amendment.

REFLECTIONS ON THE LESSON:

This lesson is an excellent way to expose students to the history of religious freedom in the United States. This lesson and a study of the cases clearly shows that our protection of religious freedom through the First Amendment is a relatively recent event in American history.

A challenging follow-up to this lesson would be to have students research other cases on religious freedom and create role play cards for the cases they reviewed. Using the summaries of upcoming cases in the American Bar Association publication, Preview of United States Supreme Court Cases, students could also create role plays involving cases that have yet to be decided by the court, allowing the students to watch the law evolve.

Note: It is important that the students performing role plays show the proper respect for the different beliefs and practices under review. This lesson can be a powerful means of teaching respect for differences protected by the Constitution.

Students' Roles For Religion Clauses Of The First Amendment

Role Play #1:

- The issue at hand is whether the government's interest in requiring minors to attend school through 9th grade outweighs a religious community's argument that its way of life requires formal education only through the 7th grade, after which the students receive informal vocational training that better suits them for life in their community. The state, on the other hand, requires you to attend a secondary school during the time your community sets aside for informal vocational training.

- You are petitioning the government to be excused from school after the 7th grade, claiming that the First Amendment's Freedom of Religion Clause allows this despite the state's interest in requiring you to go to school through the 9th grade.

Role Play #2:

- The issue at hand is whether a person may be required to participate in an activity which his or her religion forbids but which is a legal obligation. Each day at the beginning of school you are required by law to pledge allegiance to the flag. Your religion considers this a form of idolatry and strictly forbids it.

- You are petitioning the government to be excused from saluting the flag because it violates your religious principles and therefore violates the First Amendment's Freedom of Religion Clause.

Role Play #3:

- The issue at hand is whether bigamy will be allowed as a religious exercise. Your religion permits you to have more than one spouse, but the law makes this a crime.

- You are petitioning the government as a citizen who wishes to have a second spouse. You claim this right under the First Amendment's Freedom of Religion Clause.

FOR TEACHER'S USE:

Establishment Clause: "Congress shall make no law respecting an establishment of religion..." was referred to by Thomas Jefferson as a "wall of separation between church and state."

The Establishment Clause has been interpreted to prohibit the government from enacting laws aiding one particular religion over all other religions and from activity that includes sponsorship, financial support, or active involvement of government in religious activities. A famous Pennsylvania case, Abington v. Schempp, 374 U.S. 203 (1963), extended the prohibition to include government funded activity such as school prayer that aided religion over non-religious belief. There were only a handful of Church-state cases decided by the U.S. Supreme Court between 1791 to 1941. However, since 1941, this has been a major area of Supreme Court activity. The justices have widely divergent views on the topic, and the Court tends to use a case by case approach to deciding these difficult issues. However, there are some tests used to decide these church/state cases. They are described briefly below.

The Lemon Test

In Lemon v. Kurtzman, 403 U.S. 602 (1971), the Supreme Court set forth a three-part test to determine whether a statute or governmental action will meet the requirements of the establishment clause. The governmental law or conduct must meet all three of these criteria:

1. The challenged law or government action must have a secular (nonreligious) purpose;
2. The primary effect of the law or action must be to neither advance nor inhibit religion; and
3. The act or conduct must not foster an excessive entanglement of government with religion.

While five of the justices currently on the Court have expressed some concern about this test, it has been used in virtually every establishment clause case decided during the past twenty years.

The Endorsement Test

Justice O'Connor first set forth the endorsement test in Lynch v. Donnelly, 465 U.S. 668 (1984). The endorsement test considers whether the challenged law or government action has either the purpose or effect of endorsing religion in the eyes of the members of the community. For example, has the government sent a message to nonbelievers that they are outsiders and not full members of the political community? If the government has sent such a message, the action would be declared a First Amendment violation under the endorsement test. For example, a creche placed in a park in the heart of the shopping district by a local government in Rhode Island did not violate the First Amendment in the Court's view because it served the secular purpose of celebrating an increasingly secularized holiday.

The Coercion Test

In a few recent cases, Justice Kennedy has said that he would uphold governmental involvement with religion unless it directly or indirectly coerces people to support or participate in religion or gives benefits to religion so much that it establishes a state religion. For example, the passive display of religious symbols by the government during the Christmas season would not violate the coercion test.

Free Exercise Clause: "Congress shall make no law...prohibiting the free exercise thereof... (religion)."

Though the Free Exercise Clause protects an individual's right to worship as he or she chooses, it does not protect actions based on religious beliefs that violate important governmental interests, e.g., bigamy, human sacrifice, murder, etc...

There are two questions to consider in evaluating free exercise problems:

1. Does the statute or government action significantly burden the free exercise of religion?
2. If religious liberty is significantly burdened by the statute or government action, can the government show that it has an overriding or compelling interest that justifies that burden?

Outcome of the Role Play Petitions:

1. Amish children are allowed to leave school after 7th grade. State of Wisconsin v. Jonas Yoder, 406 U.S. 205 (1972).

2. Jehovah's Witnesses do not have to salute the flag. The first case to deal with this issue was a Pennsylvania case, Minersville v. Gobitis, 21 F.Supp. 581 (D.C. E.D. Pa 1937), 24 F.Supp. 271 (1938), aff'd 108 F.2d 683 (CA. 3rd Cir. 1939), Rev'd, 310 U.S. 586 (1940). That case said that Jehovah's Witnesses did have to salute the flag, but the decision was overturned by West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943).

3. A Mormon man may not take a second wife. Reynolds v. U.S., 98 U.S. 145 (1878).

A MOCK SUPREME COURT HEARING: LYNG V. NORTHWEST INDIAN CEMETERY PROTECTIVE ASSOCIATION

LESSON OVERVIEW:

This lesson explores how the Supreme Court functions and looks at the process of appellate argument by involving participants in a mock argument of a case decided by the Supreme Court, Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988). This decision focused on government action that interfered with American Indian religious practices at religious sites on public land. For background on the case, please refer to Preview of United States Supreme Court Cases, published by the Public Education Division of the American Bar Association, 1987-88 term, pp. 150-152.

GRADE LEVEL:

This lesson is designed for secondary level students.

GOALS:

As a result of this lesson, students will be able to:

1. Increase the understanding of the law and its processes via active thought and participation;
2. Develop critical thinking, public speaking and debating skills;
3. Understand how an appellate argument is conducted;
4. Explore attitudes towards the First Amendment Free Exercise Clause; and
5. Learn what rights are protected by the First Amendment Free Exercise Clause.

MATERIALS:

Preview, 1987-88 term, pp. 150-152.
For information on Preview, write to:

American Bar Association
Public Education Division
541 N. Fairbanks Court
Chicago, IL 60611-3314
Phone 312-988-5729

OUTSIDE RESOURCES:

This is a wonderful activity in which to use lawyers, judges and other law and justice professionals. You may also wish to bring in a representative of a religious group to explore current First Amendment issues.

PROCEDURES/ACTIVITIES:

☞ Begin the class by writing the following statement on the board:

★ The Government May Not Interfere In Any Way With an Individual's Right to Exercise His or Her Religious Beliefs.★

☞ Ask the class for a volunteer who strongly agrees with that statement to stand on one side of the room. Give the volunteer a chance to explain why he or she is taking this position. Then ask for a volunteer holding the opposing position and place that person on the other side of the room from the first volunteer. Randomly select a few more participants to stand where their views of the statement would fall between the two opposing views. Let each person explain why he or she took that position.

☞ Now introduce the case of Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988). Before going any further in the lesson, at this time you may wish to explain the differences between trial and appellate courts. The trial court has questions of fact and witnesses; the appellate court has questions of law and no witnesses. Ask the person who initially strongly agreed with the opening statement to represent the government in this case; have the person with the opposite view represent the Northwest Indians. Explain to the participants that attorneys have to know both sides of an argument; you have given them positions to argue that seem the opposite of the positions they initially took, but now they will have the opportunity to explore the strengths and weaknesses of the other side.

☞ Split the rest of your class into three groups. One group will join the counsel for the appellant, Richard E. Lyng, Secretary of Agriculture, representing the government. A second group will join the counsel for the appellees, Northwest Indian Cemetery Protective Association. The third group will gather separately from the other two groups to prepare for its role as the Supreme Court Panel.

☞ Provide time for each attorney group to prepare arguments for their sides. The justices ought to anticipate the arguments and prepare questions for both sides to be asked during the presentation of the argument. When counsel and the Court are ready, the Court is called to order to hear oral arguments. Beginning with the Appellants, each side has 5 minutes to present its argument.

☞ If more than one attorney is arguing the case for a side, the attorneys can divide their total argument time among themselves as they wish. After both sides have argued, the appellant will have an opportunity to argue again and rebut some of the appellee's points. The justices then may wish to allow one of the appellee's attorneys to argue again and rebut what the appellant has said. The justices may interrupt the attorneys and ask questions or may do so at the end of each argument or at the end of all the arguments.

☞ When asking questions, the justices should direct their questions to all of the participants who worked together to prepare the argument. By allowing anyone on a side to respond to the questions, the burden on the "attorneys" is lessened and the total group participation is increased.

☞ When the arguments are finished, the Supreme Court deliberates and decides which side wins the case. This deliberation should be done in front of all of the participants so everyone can observe the decision process.

☞ Once a decision is rendered, the actual decision of the Supreme Court can be presented to the group. The actual procedures for argument before the Supreme Court can be reviewed, too. Conclude the lesson by comparing and contrasting the group's procedure and decision with the actual procedure and decision.

REFLECTIONS ON THE LESSON:

The lesson works well after a mock trial exercise so the participants have trial and appellate level experiences to compare and contrast. If you have a very large group and need to divide into more small groups to get everyone involved, allow for a group to serve as court reporters, news reporters, court artists, etc. The lesson plan is easily adapted to provide for the study of cases currently being decided by the Supreme Court. If you want students to develop research skills, you might ask them to find out how the Northwest Indian Cemetery case was decided. The government won the 1988 decision.

THE ROAD LESS TRAVELED:
PROTECTING INDIAN RELIGIOUS SITES ON PUBLIC LANDS

Reprinted with permission from Preview of United States Supreme Court Cases.

The Supreme Court during its 1987-88 term had the opportunity to apply the Free Exercise Clause of the First Amendment to religious practices which are decidedly different from those of mainstream religions. The court had the opportunity to apply the First Amendment to Native American religious practices. Employment Division v. Smith, 494 U.S. 872 (1990), and Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988). The Smith case involved the use of peyote as a sacrament by Native American church members and the Lyng case involved Native American claims to preserve religious sites on public lands. This is a case memorandum prepared before the oral argument of Lyng.

ISSUE: Must government decisions adversely affecting Indian religious practices at religious sites on public land be subjected to strict judicial scrutiny?

FACTS: In the late 1970's, the Forest Service decided to complete the G-O Road, the final segment of a paved road through a wilderness area in the Six Rivers National Forest connecting the towns of Gasquet and Orleans, California. The road was part of a management plan to increase timber harvesting in the Blue Creek Unit of the Six Rivers National Forest to stimulate employment, to increase recreational use and to improve maintenance and fire control in the forest.

The preferred route, a 6.2 mile section, leads directly through the "high country," sacred to the Yurok, Karok and Tonowa Indians of California's Northwest. In fact, the route lies between the two most sacred places: Chimney Rock at the top of the high country and Doctor Rock, three miles below. The Forest Service commissioned Dr. Dorothea Theodoratus to undertake a study of the importance of the high country to the Northwest Indians. The study recommended the Forest Service use an alternative route for the road, because "intrusions on the sanctity" of the area were "potentially destructive of the very core of Northwest religious beliefs and practices."

After modifying the logging plan to protect specific sites, the Forest Service chose the disputed route. The state of California, on behalf of its Native American Heritage Commission, Northwest Indians and an Indian group initiated litigation in federal court to halt the Forest Service's plans. The two suits were combined because they raised the same issues.

The Forest Service agreed not to build the road until the case could be resolved. After a trial, the court held that the Forest Service's plans violated the Free Exercise Clause of the First Amendment. Consequently, the court ordered the Forest Service not to build the road or permit logging in the high country.

Before the case could reach the Ninth Circuit Court of Appeals, however, Congress designated most of the land within the Blue Creek Unit of the forest as a Wilderness Area. This designation will prevent most logging in the high country. Nevertheless, the new law left out a narrow strip of land to permit completion of the G-O road. The Forest Service appealed to the Ninth Circuit Court of Appeals, which upheld the lower court [795 F.2d 688 (1986)]. The United States then applied for certiorari to the United States Supreme Court.

BACKGROUND AND SIGNIFICANCE:

American Indian attempts to invoke the Free Exercise Clause of the First Amendment to prevent destruction of sacred religious sites have been largely unsuccessful. Two major factors play a role in these cases. First, the land is usually public land which is often part of a state or national forest. Thus, courts see the tribe as merely one interest group among many competing for use of the land. The second problem is that Native American religious practices differ significantly from those of the dominant society. Thus, judges tend to undervalue the importance of land to Indian religious beliefs. If one compares a sacred grove to a church, for instance, one can compare logging the grove to tearing down the church to build a freeway. Regrettable, perhaps, but the worshippers can always build another. Indian arguments that rituals must be performed in the sacred grove to be effective do not make sense.

This case may not suffer from either of these faults. The study by Dr. Theodoratus concluded that preservation of the land is indispensable to the rituals performed in the high country. Moreover, the road had not been built, because the Indians acted quickly enough to halt construction pending the outcome of the lawsuit. Finally, although the road was originally planned in part to stimulate more logging in the high country, the California Wilderness Act will prevent any commercial uses, including logging, in most of the high country. Thus, the government was left with arguments in favor of the road that it seemed to be less than compelling.

On the other hand, the Court was bound to be concerned about the impact of a favorable decision in this case on administration of public lands, an impact the government stresses in its brief. If each of hundreds of identifiable Indian groups in the country makes claims to protection of sacred lands, there will be no public lands left for development favoring other public uses. Four amicus briefs written by states, local governments, and associations interested in commercial development of public land, such as mining associations, urged the Court to deny the Indians' claim.

The Court applies a two-part analysis in free exercise cases. First, it requires a showing that the government action significantly burdens Indian religion. In Indian religion cases, this question is often dealt with by asking whether the religious practice is central or indispensable to the religious belief. If so, the Court examines whether the action serves an overriding purpose and can be achieved by some method that intrudes less on religious freedom.

The government argued governmental action that is hostile to a religion or coerces religious beliefs is necessary to meet the burden requirement. The road may make it more difficult for a group to practice its religion, but does not force the Indians into conduct contrary to their religion. The government's second argument was also innovative. The government urged the Court to consider free exercise claims affecting public lands as similar to a claim to speak on ordinary public property. For example, the Court judges a law denying a person the right to speak in Lafayette Square, a public forum, much more strictly than a law barring speeches in a public building, like a public library. Instead of requiring a compelling government interest to uphold public land management decisions affecting religious practices, the government urged the Court to require only that such decisions be reasonable.

The ACLU, Indian organizations and religious advocacy organizations have written four amicus briefs supporting the Indians and the state. The road's opponents urge the Court to reject the government's argument that some sort of coercion is necessary, but rather to conclude the road will significantly burden their religion. The Indians and the state also counter the government's public forum/public property distinction, arguing a religious site is more like a public forum than public property, since the definition of public forum is property that has been used by the public for speech since time immemorial and the Northwest Indians have used the high country for religious practices for centuries. Thus, they argue the government must have a compelling justification for the road to override the religious claims.

If the Court decides to apply strict scrutiny, the Indians could win, because the government has practically acknowledged there is no compelling purpose to be served by this particular road. Moreover, the Court had recently shown some division on the proper standard to be applied in Free Exercise Clause cases, with some members of the Court reluctant to require compelling governmental purposes in every case. Thus, the Court may create an exception to the general rule requiring a specific overriding purpose when land management decisions affect religious practice.

ARGUMENTS:

For Richard E. Lyng, Secretary of Agriculture [Counsel, Donald B. Ayer, Department of Justice, Washington, DC 20530; telephone (202) 633-2217].

- There is no burden justifying a Free Exercise Clause analysis, because the decision to build the road was not aimed at the Indians' religious beliefs and there is no coercive government action.

- The Court should not require the government to organize its own internal affairs to subsidize a group's spiritual development.

- Even if free exercise analysis is proper, the Court should only require a public land management decision to be reasonable and neutral.

- Here, the decision to build the road is reasonable, because the road will improve recreational access; increase competition for timber contracts, and improve the administration of public lands.

For Jimmie James, Sam Jones, Christopher H. Peters and the Northwest Indian Cemetery Protective Association [Counsel of Record, Marilyn B. Miles, 324 F Street, Suite A, P. O. Box 1228, Eureka, CA 95501; telephone (707) 443-8397].

- The Court should reject the argument that governmental coercion is necessary and hold that construction of the road burdens Northwest Indian religious practices.

- The road is a threat to continuance of the religion itself and not the kind of purely internal government practice that the Court has subjected to a lesser standard of review in the past.

- The government's general interest in land management is not a good reason for according a lesser standard of review. The Court should require a compelling government interest and not merely a reasonable basis.

- If strict scrutiny is applied, the Northwest Indians should win, because the government has not presented any sufficiently compelling interest.

For the State of California [Counsel of Record, Edna Walz, 1515 K Street, P. O. Box 944255, Sacramento, CA 94244-2550; telephone (916) 324-4366].

- When government controls access to religious objects, denial of access is inherently coercive.

- Destruction of the holy place shows hostility, not neutrality to religion, especially in light of the long history of intolerance toward traditional Indian religious.

- The government's interest in land management is the sort of general interest the Court has rejected as insufficient in the past.

AMICUS BRIEFS:

In Support of the Northwest Indian Cemetery Protective:

The American Civil Liberties Union; the American Jewish Congress and the Bureau of Catholic Missions, jointly; the National Congress of American Indians, Association on American Indian Affairs, the Karuk Tribe of California, the Tonowa Nation, the Hoopa Tribe of California, the Confederated Salish and Kootenai Tribes of Montana, the Kootenai Tribe of Idaho and the Tunica-Biloxi Tribe of Louisiana, jointly; the Christian Legal Society, American Jewish Committee and Concerned Women for America, jointly.

In Support of Richard E. Lyng, Secretary of Agriculture:

The Howonquet Community Association, Carpenters' Union Local 1040, Tri-Agency Development Corporation, the Area Independent Development Corporation, the Crescent City-Del Norte Chamber of Commerce, and Del Norte Taxpayers League, jointly (by the Pacific Legal Foundation); the states of Hawaii, South Dakota, Utah and Washington, jointly; the City of Williams, Arizona; the Colorado Mining Association, the Nevada Mining Association, the Utah Mining Association, the Wyoming Mining Association and Montana Coal Council, jointly.

MOOT COURT PROCEDURE

The Players:

Attorneys for the Petitioner - the party making the appeal
Attorneys for the Respondent - the other side
Judges - a panel of judges

Preparation:

☞ Attorneys for the Petitioner and Respondent will:

- Develop a brief statement of your position;
- Cite facts from the case to support your position;
- Explain how the facts support your position;
- Cite and apply to this case a previous court decision that supports your decision; and
- Explain why a ruling in your favor is best for policy reasons (social, health, educational, etc.).

☞ Judges will:

- Develop questions to clarify facts;
- Develop questions to clarify the relationship between previous court decisions and this case; and
- Develop questions to clarify the policy implications of a ruling in favor of each side.

The Hearing (suggested times for a 15-20 minute argument):

- Petitioner's Argument - 5 minutes.
- Questions/Answers - 2-3 minutes. Any attorney for petitioner may answer the question(s).
- Respondent's Argument - 5 minutes.
- Questions/Answers - 2-3 minutes. Any attorney for respondent may answer the question(s).

The Ruling:

In open court (translation: in front of the whole class) discuss:

- The strongest arguments presented by Petitioners. Points that could/should have been raised but weren't;
- The strongest arguments presented by Respondents. Points that could/should have been raised but weren't; and
- Your decision and the basis for it, taking into account: the facts, the law, precedent, and any policy considerations.

These Moot Court procedures modified from those developed by Aguida Agnes Alvez for the National Institute for Citizen Education in the Law and is used by Temple-LEAP with permission.

AWAY WITH THE MANGER

LESSON OVERVIEW:

This lesson focuses on the Establishment Clause of the First Amendment. It concerns the constitutionality of two holiday displays located on public (governmental) property. One display is a Christian creche, or nativity scene, placed on the steps of the county courthouse. The other holiday display in question is an 18-foot Jewish menorah placed next to the city's 45-foot decorated Christmas tree outside the City Hall. In front of this display is a sign announcing that the city salutes liberty.

GRADE LEVEL:

This lesson is appropriate for grades four through eight. It can easily be adapted to high school level.

GOALS:

As a result of this lesson, students will be able to:

1. Learn to analyze a problem by applying the Supreme Court's "Lemon" test to the facts of a particular situation;
2. Determine what kinds of governmental action may either "inhibit" or "advance" religion according to the First Amendment; and
3. Distinguish between secular observations or celebrations and religious celebrations.

MATERIALS:

You will need to develop poster-size drawings of the following:

- a) Nativity scene with an angel holding a banner proclaiming, "Gloria in excelsis deo," or "Glory to God in the highest";
- b) Nativity scene with no words, banners, or proclamations;
- c) Menorah (candelabra with eight candle holders) next to decorated Christmas tree. The menorah should be scaled to 18 feet, and the tree to 45 feet. A sign at the foot of the tree reads, "During this holiday season, the City of Pittsburgh salutes liberty. Let these festive lights remind us that we are the keepers of the flame of liberty and our legacy of freedom;" and
- d) Santa Claus surrounded by toys and presents.

A statement of the "Lemon" Test
Case summary County of Allegheny v. ACLU, 492 U.S. 573, (1989).

OUTSIDE RESOURCES:

A participant in local government, such as a City Council member or an attorney.

PROCEDURES/ACTIVITIES:

☞ Tape one poster to each of the four walls of the classroom. Explain that the students are to assume that they are members of city council (or other body of local government) and they must decide on the propriety of these decorations for the coming holiday season. Each of the posters represents a three-dimensional holiday decoration which could be displayed inside the City Hall and in front of City Hall. Each student is required to select a design for display in front of the courthouse by standing in front of that pictorial representation.

☞ After students have made their selections, ask each group of students who have gathered in front of a design to discuss among themselves the reasons for their selection. Each group should designate a spokesperson to share those reasons with the rest of the class.

☞ Read the following statement to the class:

"GOVERNMENT MUST NOT ADVANCE OR INHIBIT RELIGION IN ITS PRINCIPAL OR PRIMARY EFFECT"

☞ Explain that this statement means that government is not allowed to appear to take sides on questions of religious belief or to appear to endorse one religion over another or any religion over no religion. Ask the students if any of them would change their selections for the courthouse holiday display. Inquire of those students who said they would change their initial selection to move to the display they would now select. Ask students who changed their minds to explain why they changed their initial selection. Students should return to their seats and reassume their roles as members of the city council.

☞ Stimulate class discussion of the Establishment Clause by using some of the following questions:

- ▸ What differences are there between the two posters of the creche?
- ▸ Do you think that one nativity scene is more constitutionally acceptable than the other? Why? Why not?
- ▸ What does "secular" mean?
- ▸ Which of the posters show secular holiday displays?
- ▸ Are holiday displays more "constitutional" if they contain "secular" symbols? (e.g., decorated tree, Santa, candy canes, stars, elves, etc.)
- ▸ Are displays (like the menorah, tree, and sign saluting liberty) that have both religious, patriotic and secular elements constitutional? Why or why not?

☞ Pass out copies of "The Lemon Test." Discuss which of the holiday displays, if any, would pass this test. For additional enrichment, each student can write a brief opinion paper on this topic.

☞ Discuss the outcome of the U.S. Supreme Court's decision in County of Allegheny v. ACLU, 492 U.S. 573 (1989).

REFLECTIONS ON THE LESSON:

Obviously, a good time for this lesson is December. You might follow up the exercise by asking the students to observe the holiday displays in public places in their own city or town and discuss whether or not the displays pass Constitutional muster. Are there any displays at your courthouse? Public Library? City Park? School? Mall?

Case Summary: County of Allegheny v. ACLU, 492 U.S. 573 (1989).

The creche with the banner is unconstitutional because "the words endorse a patently Christian message: Glory to God for the birth of Jesus Christ. Although the government may acknowledge Christmas as a cultural phenomenon, it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus." County of Allegheny v. ACLU, 492 U.S. 573, 600 (1989). The Court further stated:

> The Constitution mandates that the government remain secular, rather than affiliating itself with religious beliefs or institutions, precisely in order to avoid discriminating against citizens on the basis of their religious faiths. Thus, the claim that prohibiting government from celebrating Christmas as a religious holiday discriminates against Christians in favor of nonadherents must fail, since it contradicts the fundamental premise of the Establishment Clause itself. In contrast, confining the government's own Christmas celebration to the holiday's secular aspects does not favor the religious beliefs of non-Christians over those of Christians, but simply permits the government to acknowledge the holiday without expressing an impermissible allegiance to Christian beliefs. , 492 U.S. 573, 610 (1989).

To determine whether the government's display of objects having religious significance improperly advances religion, the Court concluded that Justice O'Connor's concurrence in another case, Lynch v. Donnelly, 465 U.S. 668, 687-694 (1984), sets forth the proper analytical framework.

1. The Supreme Court suggests that any endorsement of religion is invalid, because it "sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."

2. In reviewing this issue Justice O'Connor suggested that you consider, "what viewers may fairly understand to be the purpose of the display," taking into consideration the context, or setting, in which the display is placed. For example, "a museum setting ... negates any message of endorsement of that content."

The Court concluded that the menorah display does not have the prohibited effect of endorsing religion because of its "particular physical setting." Its combined display with a Christmas tree and a sign saluting liberty did not impermissibly endorse the Christian and Jewish faiths, but simply recognized that both Christmas and Chanukah are part of the same winter holiday season, which has attained a secular status in our society. Beside the tree's secular status, its size and central position in the display was the predominant element. The placement of the menorah beside it was readily understood as simply a recognition that Christmas is not the only traditional way of celebrating the season. The presence of the sign saluting liberty confirms that in the particular context the government's association with a religious symbol did not represent sponsorship of religious beliefs, but simply a recognition of cultural diversity. Given all these considerations, it is not sufficiently likely that a reasonable observer would view the combined display as an endorsement or disapproval of his individual religious choices. County of Allegheny v. ACLU, 492 U.S. 573, 613-621 (1989).

The Lemon Test

In Lemon v. Kurtzman, 403 U.S. 602 (1971), the Supreme Court set forth a three-part test to determine whether a statute or governmental action will meet the requirements of the establishment clause. The governmental law or conduct must meet all three of these criteria:

1. The challenged law or government action must have a secular (nonreligious) purpose;
2. The primary effect of the law or action must be to neither advance nor inhibit religion; and
3. The act or conduct must not foster an excessive entanglement of government with religion.

While five of the justices currently on the Court have expressed some concern about this test, it has been used in virtually every establishment clause case decided during the past twenty years.

CHOOSE ON CHOICE:

PENNSYLVANIA'S SCHOOL CHOICE LEGISLATION AND THE SEPARATION OF CHURCH AND STATE

LESSON OVERVIEW:

In the fall of 1991, there was an attempt in Pennsylvania, through House Bill 1133 and Senate Bill 992, to enact legislation whereby each student in Pennsylvania might attend the school of his or her choice (be it private, public, or parochial) and receive a $900 tuition voucher from the state. For purposes of this lesson, only House Bill 1133 will be considered.

In this activity students place themselves on a continuum of opinion by lining themselves up from complete agreement with the bill to the opposite end of complete disagreement with the bill or anywhere in between depending on how strongly they feel for or against the bill. A discussion of student views will follow a legislative debate wrapping up the lesson.

GRADE LEVEL:

This lesson is appropriate for grades nine through twelve.

GOALS:

As a result of this lesson, students will be able to:

1. Analyze a proposed law;
2. Determine if the separation of church and state applies in this instance; and
3. Be able to state a reasoned point of view and listen to the views of others.

MATERIALS:

The language of the First Amendment visible to all
A summary of House Bill 1133
Large flip chart, marking pens and masking tape

OUTSIDE RESOURCES:

Your local state legislator would add an understanding of the legislative process to the lesson. In addition to lawyers and judges, other resource persons to consider might include teachers and school administrators from public and private schools.

PROCEDURES/ACTIVITIES:

☞ List objectives.

☞ Distribute the synopsis of House Bill 1133.

☞ Have students write their position and two reasons why they either support or oppose the bill.

☞ Post signs at each end of the room:

"STRONGLY AGREE" ⇐ and ⇒ "STRONGLY DISAGREE."

☞ Have the students vote with their feet by positioning themselves under the sign of choice or somewhere in between the two signs (the students should take their list of reasons for supporting or opposing the bill with them).

☞ Starting at one end, ask several students to explain their reasons for voting as they did (if necessary, ask questions to clarify a point). The resource person could participate during this questioning process. Emphasize listening skills.

☞ Depending on time constraints, you can ask every student to explain his or her position or just get a sampling of views from selected students. You may want to alternate the presentations from the opposite sides, giving proponents of each side a chance to voice their positions. Remind students that in class they may disagree with ideas but are not to criticize people.

☞ After the selected students have responded, tell the students that they may reposition themselves if they feel that they have changed their mind after listening to the reasoning of the other students or if they positioned themselves incorrectly in the first place.

☞ Take a vote on this Bill and announce the result. Tell the class that they are now going to hold an appellate hearing to determine whether or not this law violated the First Amendment.

☞ Have the students count out the numbers one (1) through three (3) until all the class members have a number. Assign the roles for the appellate argument (an alternative is to use a legislative committee format):

- ➡ Number one (1) - judge;
- ➡ Number two (2) - lawyer, who will argue that the law DOES violate the First Amendment; and
- ➡ Number three (3) - lawyer, who will defend the law and contend that it DOES NOT violate the law.

☞ The lawyers should write down the best arguments for their position while the judges prepare questions to ask both sides.

☞ Have students gather in groups of three (3) with each group composed of a judge and lawyers for the opposing sides. Each group should be composed of students who were initially assigned numbers 1, 2 & 3. Each group will conduct a mini appellate argument. The judge will preside, giving each "lawyer" a chance to present the best argument for his or her side. Time limits for each side's presentation might be 2 to 3 minutes. The judge should ask questions to clarify the issues. At the conclusion of the arguments the judges should NOT announce a decision to the lawyers.

☞ Call the class back together and ask each judge to announce a decision and the reasons for the decision. Chart the decisions on the board. The resource person can be most helpful during this debriefing and analysis of the decisions.

REFLECTIONS ON THE LESSON:

This lesson fits in a Social Science, American Government, American History, or Civics class on studies of the establishment of religion and the freedom thereof versus the government's mandate of providing for the general welfare. A teacher made the following comments after using this lesson:

> "Needed previous knowledge would include an understanding of the First Amendment, the reason for the wording regarding the establishment of a religion, the Supreme Court decisions that have reaffirmed or modified this right, and how the Pennsylvania Constitution addresses this issue. Additionally, the student should know the cost of education and the state's role in this expenditure. Students must also understand a continuum of ideas; that there can be many levels of agreement or disagreement."

SUMMARY OF
HOUSE BILL NO. 1133
SESSION OF 1991

The General Assembly of Pennsylvania

Section 1. The act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949, is amended by adding a section to read:

Section 1310.1. Educational Choice. - (a) The General Assembly finds that many disadvantaged school-age residents of this Commonwealth enjoy comparatively fewer educational opportunities or options than their counterpart of greater economic means. In addition, the General Assembly finds that all students in this Commonwealth and their parents, would benefit from the lifting of limitations and restrictions on their ability to select the educational settings best suited to their needs. In order to assist in equalizing educational opportunities for its citizens, to better prepare its citizens to compete for employment opportunities and to foster development of a more capable and better-educated work force for Commonwealth employers, the Commonwealth hereby adopts a program to enhance educational choice in this Commonwealth.

Other significant provisions of the amendment include:

- "Eligible students" under this proposed law are all school-age residents of Pennsylvania;
- A selected public school can reject applicants if it has no available slots for students outside its district, or if the sending or receiving school would be violating a desegregation order if the applicant attended or left that school; and
- Parents would receive tuition grants of either $900 or 90% of the actual amount of tuition paid, whichever is less. The base amount would increase in subsequent years.

AN IMPARTIAL JURY: *VOIR DIRE* AND THE BILL OF RIGHTS

LESSON OVERVIEW:

This lesson presents students with an opportunity to experience being questioned for possible jury service. The lesson provides an exciting forum for considering one of the essential forms of citizen participation in our system of justice.

GRADE LEVEL:

This lesson is appropriate for secondary students.

GOALS:

As a result of this lesson, students will be able to:

1. Explain the process of *voir dire*;
2. Understand strategies of jury selection; and
3. Recognize the responsibilities and duty of citizenship involved in jury service.

MATERIALS:

Jury Selection Fact Pattern, Municipality of Temple v. Alexander
Special Note(s) to Juror, directions to individual jurors

OUTSIDE RESOURCES:

Trial attorneys would be especially useful in teaching this lesson, serving as the judge in the lesson or coaching the "student attorneys" through the *voir dire* exercise. Court personnel and persons who have served on a jury could also add their observations and experience to the success of this exercise.

PROCEDURES/ACTIVITIES:

☞ Provide all students with a copy of "Jury Selection Fact Pattern, Municipality of Temple v. Alexander" which describes the case.

☞ Pick a small group of students to serve as prosecutors and another group to serve as defense attorneys. The students should prepare questions to ask potential jurors.

☞ Have the remaining students serve in the jury pool. Distribute "Special Note(s) to Jurors" to 12 potential jurors and ask the students to assume the roles described on the "Special Note" they were given. These potential jurors are the juror panel from which the trial jury will be chosen through the ***voir dire*** process.

☞ The attorney teams will interview potential jurors, picking a few jurors from the panel to serve on the trial jury. The "attorneys" will explain the reasons for their selections. They will also explore why they asked certain questions.

☞ Ask the visiting lawyer, or other resource person, to compare this exercise with a real jury selection. Have the resource person discuss what may or may not be asked of a potential jury member.

☞ Review the "jury" amendments of the Bill of Rights. A debriefing of this exercise with a resource person could include a discussion of some of these questions:

- ➡ In what types of cases do we have the right to a jury?
- ➡ What size must a jury be?
- ➡ What is an "impartial" jury?
- ➡ May the state (or defense) exclude potential jurors because of the juror's race?
- ➡ How do jurors make their decision?
- ➡ Do all jurors have to agree on a verdict?
- ➡ May a jury ask for more witnesses?
- ➡ May a juror take notes?
- ➡ May a handicapped person serve on a jury?
    - ▸ A blind person?
    - ▸ A deaf person?
- ➡ May a juror read the newspaper, watch TV, or listen to the radio?
- ➡ May a juror ask a witness or the defendant, a police officer or the court, questions that are important to the jury for deliberation?
- ➡ What happens if a juror gets sick (or dies) during trial?
- ➡ If the jury determines the "facts," and the court decides the "law", is there an explainable difference between the "law" and the "facts?"

☞ Ask the students if they know of anyone who has ever been on a jury. Do they know of anyone who was excused from jury duty? For what reason? Discuss the class attitude towards jury service. You might want to have students survey teachers and other adults to get a view of the general attitude about jury service.

REFLECTIONS ON THE LESSON:

This lesson is an exciting way to begin to make the jury selection process understandable to future jurors. An easy variation on this lesson is to mandate that the defense and the prosecution may only get rid of a prescribed number of the twelve jurors (for example, each side can keep two potential jurors off of the jury). The follow-up activity for the lesson then starts with an explanation of why certain potential jurors were "struck" from the jury pool. Another variation has all class members ranking the jurors 1 to 12 from the perspective of each side in terms of suitability for jury service.

Jury Selection Fact Pattern:

Municipality of Temple v. Alexander

Thomas Alexander is an eighteen year old senior at Temple High School. His high school activities include the varsity basketball team, football team and debate team. Thomas is well liked by his teachers and classmates. Early in his senior year, he was selected as the most likely to succeed. Thomas is of Native American decent.

On April 1, 1991, Thomas got into a heated argument with Daphne Martin, who was a cheerleader at Temple High. Thomas had to be restrained by several teachers who happened to be nearby. As news of the incident spread around campus, Thomas was ridiculed by his fellow students for picking on a girl. The harshest criticism came from David Porter, who was a long time rival of Thomas. It was well known around school that the two disliked each other and that they had physical confrontations in the past.

On April 2, 1991, Thomas confronted David about the remarks David had made the day before. David took exception to this line of questioning and punched Thomas in the mouth. The two began to fight and had to be separated. Thomas vowed that he would return and kill David.

When Thomas left school he was very upset. He went home and locked himself in his room and plotted how he would get back at David. Later that night, he sneaked his father's pistol into his room and decided that he would take care of David once and for all. The next morning Thomas got dressed and went to school as usual. He did not come in contact with David until about 10:00 a.m. in the school gym. Thomas challenged David to another fight and the two men went into the locker room where Thomas pulled out the gun and shot David five times. David died later that night from gunshot wounds.

Thomas is now facing trial for first degree murder in the Temple Court of Common Pleas.

Special Notes To Jurors

Copy these "Special Note(s) to Jurors" and distribute one note to each of the 12 students selected as potential jurors. Ask the students to review the information and assume the role described on the "Special Note" they were given. They will (play) this character for the exercise. The potential jurors will form the juror panel from which the trial jury will be chosen through the ***voir dire*** process. They are not to discuss their role with any other student except when responding to questions by "attorneys" during ***voir dire***. Since the "life experience" of high school students can be limited (few students are married, parents, veterans, etc.), those details have been added to the "Special Notes to Jurors." Students can flesh out their roles but should be instructed to remain in character. Students should not change their opinions on the issues of the day unless their role card requires such a position shift.

(Copy or cut and paste these Special Notes below on separate cards)

★ ★ ★ ★ ★

SPECIAL NOTE TO JUROR #1

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are of Native American descent, 34 years old, married with two children under the age of 10.

★ ★ ★ ★ ★

SPECIAL NOTE TO JUROR #2

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a minister (put on your white collar). Your congregation has undertaken the renovation of its historic building. You are married with no children.

★ ★ ★ ★ ★

SPECIAL NOTE TO JUROR #3

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a high school football coach. Your school played in the state championship game two years ago. At State College you were on the football team but rarely got in the game. Your spouse and daughter do not like football.

★ ★ ★ ★ ★

* * * * *

SPECIAL NOTE TO JUROR #4

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a member of David Porter's church. You are unmarried and unemployed.

* * * * *

SPECIAL NOTE TO JUROR #5

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a nurse. You are married with four children.

* * * * *

SPECIAL NOTE TO JUROR #6

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you have been a crime victim. You were mugged in 1984, requiring a week-long hospital stay. You are a professional secretary and are unmarried.

* * * * *

SPECIAL NOTE TO JUROR #7

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a political activist who believes that the death penalty is arbitrarily imposed upon minority groups. You are a paid consultant to businesses, married and without children.

* * * * *

SPECIAL NOTE TO JUROR #8

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also totally blind. You are married with two children and you work as a university professor.

* * * *

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SPECIAL NOTE TO JUROR #9

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a full-time homemaker. Your spouse is a doctor. You have three small children.

* * * * *

SPECIAL NOTE TO JUROR #10

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a strong abortion opponent who has been arrested in "Operation Rescue" activities. You work in a factory and are single with one child.

* * * * *

SPECIAL NOTE TO JUROR #11

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a active member of the American Civil Liberties Union (ACLU). You are unmarried and work as a stockbroker.

* * * * *

SPECIAL NOTE TO JUROR #12

You are to answer all of the questions based on your own life experience. However, for the purposes of this exercise, you are also a person with a background that includes a series of arrests in the 1960's during anti-war protests. You protested the Persian Gulf War as well, but you were not arrested during those protests. You are divorced with three children, all grown. You work as a stage manager for a local theater.

* * * * *

DO YOU REALLY NEED A LAWYER?
THE SIXTH AMENDMENT & THE RIGHT TO COUNSEL

LESSON OVERVIEW:

This lesson is about the Right to Counsel under the Sixth Amendment to the United States Constitution. Under this amendment, the accused shall have the assistance of counsel for his defense. For indigent defendants charged with a crime punishable by death or imprisonment, the state must provide a lawyer for that person if he/she cannot afford one.

GRADE LEVEL:

This lesson is appropriate for secondary school classes.

GOALS:

As a result of this lesson, students will be able to:

1. Develop an understanding of the Sixth Amendment Right to Counsel; and
2. Demonstrate the advantages of being represented by counsel.

MATERIALS:

Trial Transcript Excerpt Number One, A Hearing Without Defense Counsel
Trial Transcript Excerpt Number Two, A Hearing With Defense Counsel
Supplemental Information for Teacher/Attorney

OUTSIDE RESOURCES:

Invite any of the following members of your community to your class: judge, criminal defense lawyer, assistant district attorney, or police officer. All would make excellent resource persons for this lesson.

PROCEDURES/ACTIVITIES:

☞ Distribute copies of the "Trial Transcript Excerpt Number One, A Hearing Without Defense Counsel" to all students. Assign reading roles. Conduct a "dramatic" reading of the excerpted trial transcript.

☞ Students without reading roles should look for places in the story where they believe the rights of the defendant have been infringed.

☞ When the reading is completed, ask the students to highlight the places where the defendant failed to have his or her rights protected. Make a class list of those situations.

☞ Distribute copies of the "Trial Transcript Excerpt Number Two, A Hearing With Defense Counsel" to all students. Ask small groups of students to read through the excerpted transcript and determine if and how the defendant's rights are protected in this excerpt.

☞ Each group, working with the class list developed after the dramatic reading of the "Trial Transcript Excerpt Number One, A Hearing Without Defense Counsel" should note how each situation was addressed in "Trial Transcript Excerpt Number Two, A Hearing with Defense Counsel."

☞ Compare and contrast the protection of the defendant's rights depicted in the two excerpted trial transcripts. The class will uncover many of the trial protection found in the Bill of Rights.

☞ Additional activities might include:

- Conduct a discussion concerning the benefits/disadvantages of representation by an attorney versus self-representation.
- Conduct a discussion concerning the benefits/disadvantages of court appointed counsel versus counsel selected by the defendant.
- Watch the movie Gideon's Trumpet. The opening 10 minutes of the film will provide enough material for the rest of the class discussion. Temple-LEAP staffers have seen a film with the real Gideon in it and also the more recent video starring Henry Fonda.

REFLECTIONS ON THE LESSON:

This lesson provides an excellent way to explore the role of defense counsel at trial. It could also serve as an introduction to a study of how the rights of adults charged with a crime differ from the rights of juveniles charged with a crime, even when the crimes are the same.

SUPPLEMENTAL INFORMATION FOR TEACHER/ATTORNEY

1. The Right to Counsel is found in the Sixth and Fourteenth Amendments:

   a. The Sixth Amendment guarantees the right to counsel for federal criminal defendants. The Bill of Rights does not apply directly to the states; it is through the Fourteenth Amendment that the ten amendments of the Bill of Rights are applied to the states.

   b. Fourteenth Amendment:

      - States are prohibited from denying rights guaranteed by the U.S. Constitution;
      - Does not mention specific rights (from Bill of Rights); and
      - Does not specify procedures to protect rights.

2. Language of the Sixth Amendment:

   > "In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

3. The key Right to Counsel Rulings are:

   a. Powell v. Alabama, 287 U.S. 45 (1932), determined that state courts must provide a lawyer for indigent defendants charged with a crime punishable by death or life in prison. The lawyer must be provided early enough in the criminal process to be able to provide an adequate defense.

   b. Johnson v. Zerbst, 304 U.S. 485 (1938), held that indigent defendants are entitled to a free lawyer in federal courts under Sixth Amendment because of the decision in this case.

   c. Betts v. Brady, 316 U.S. 455 (1942), held that the constitution did not require states to provide lawyers to indigent defendants in prosecutions where the defendant was of average intelligence and the charge not so serious or complicated that the defendant was at a serious disadvantage from lack of counsel.

      - Subsequent to Betts, the Supreme Court reversed state court decisions on denial-of-counsel grounds because of "special circumstances."

d. Gideon v. Wainwright, 372 U.S. 335 (1963). This case involved a fifty-two year old man who was arrested in Bay Harbor, Florida, charged with breaking and entering a pool hall with intent to steal. He had a long history of criminal activity and placement in correctional facilities. The defendant, Gideon, requested a court-appointed attorney to represent him. The Judge refused the request because appointed counsel were only required in "capital cases and in other cases where there were special circumstances" in which a defendant could not adequately defend himself/herself. In this case, no special circumstances were deemed to exist in the eyes of the trial judge. Gideon was convicted of breaking and entering with intent to steal and he was sentenced to five years in the Florida State Penitentiary.

- Gideon filed a *Writ of Habeas Corpus* with the Supreme Court of Florida. [*Writ of Habeas Corpus* is used to physically bring a prisoner who is detained in a jail or prison before the court to give evidence.] The Florida Supreme Court denied the Writ.

- Gideon filed request for Writ of Certiorari (special appeal to the highest court in the U.S.) to the U.S. Supreme Court and motion for leave to proceed *in forma pauperis* (be declared indigent).

- The U.S. Supreme Court decided to hear Gideon's case.

    - ➡ **Issue**: Whether an indigent defendant charged with a felony is denied due process when legal representation is refused by the state?

    - ➡ **Holding**: Yes. States must provide court-appointed counsel to indigent defendants in felony cases. "A lawyer is so important to what is fundamental and essential to a fair trial."

- Follow-up Activity: Obtain a copy of the videotape, Gideon's Trumpet, and view it with the class.

e. Scott v. Illinois, 440 U.S. 367 (1979), extended the Supreme Court's ruling in Gideon. The 6th and 14th Amendments require only that no indigent criminal defendant be sentenced to imprisonment unless the State has afforded him/her the right to assistance of appointed counsel in his/her defense.

Trial Transcript - Excerpt Number One

A Hearing Without Defense Counsel

Bailiff: Next case.

Judge: Let me see... this is the case of the Commonwealth v.(fill in any name you wish). How do you plead?

Defendant: Plead? I don't even know why I was arrested?

Judge: Well, you should have found out. How do you plead?

Defendant: Can I talk to a lawyer before I tell you how I plead?

Judge: You have a lawyer?

Defendant: No, not yet. I am poor and I can't afford to pay for a private attorney.

Judge: Too bad. If you want to ask that lawyer over there (points to the assistant district attorney) a question, feel free to do so at any time.

Defendant: But she/he is the prosecutor who is trying to put me in jail!

Judge: But the prosecutor is the only lawyer around now.

Defendant: Don't I have the right to my own lawyer?

Judge: Not in my courtroom, you don't. Let's get on with the case. Bailiff, call the first witness.

Bailiff: Officer (use name of role player), please place your right hand on the Bible. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Officer: I do.

Asst. D.A.: Officer, do you recognize the defendant?

Officer: Yes. The defendant was arrested by me last month for selling drugs to children.

Asst. D.A.: Tell us about the arrest.

Officer: Well, I was walking near the (fill in any name you wish) school when I saw the defendant walking down the street. I stopped the defendant and started to ask him/her what the defendant thought about Charles Barkley. When the defendant told me he/she thought that Barkley was a lousy player, I got mad and frisked the defendant just to show him/her who was boss. When I felt a bandage on the defendant's arm, I ripped open his/her sleeve up to the bandage and pulled off the bandage to find what looked like needle marks under the bandage.

Defendant: But I am a diabetic… I take two shots a day.

Judge: Please be quiet. You'll get your chance to tell your side of the story later on.

Defendant: But I don't want to testify!

Judge: Why? Are you guilty?

Asst. D.A.: Of course he is guilty. Just listen to my witness. Please continue Officer.

Officer: Anyway, once I saw the drug tracks I knew I had a pusher in my grasp.

Asst. D.A.: What did you then do?

Officer: I put my handcuffs on the defendant and took him/her downtown to the police headquarters. I left him/her in a closet because all of our cells were filled. It's a little bit embarrassing, but I forgot about the defendant being in the closet and it wasn't until the next day when I heard screams coming from the closet that I remembered to go get the defendant out of the closet. It probably was just as well that the defendant spent 24 hours in the closet because he/she was a really tough cookie to crack. My partner and I interrogated him/her in shifts for three days before we finally got the confession that the defendant was a drug dealer. Once we got the confession, we arrested the defendant.

Judge: I just want to thank the officer for doing a good deed in getting this drug dealer off the streets.

Defendant: Can I ask the officer a question?

Judge: Why?

Defendant: Because I think the officer made up this whole thing about the drugs because of what I said about Barkley being a second rate player.

Judge: Well, you think what you want to think. I'm not going to let you ask questions. Also, because you seem like such a bum, I am going to send you back to the jail right now. That will enable the professional jurors in this courtroom to hear the rest of the evidence against you without you interrupting.

Defendant: Can't I first find out what will happen to me if I am found guilty?

Judge: If? You must mean when… anyway, if you are convicted, I am going to send you to the drug clinic where the doctors will cause you to become addicted to heroin. Once your body is totally addicted, you will be taken to a solitary cell where you will be forced to withdraw "cold turkey" from the drug. That will teach you to sell drugs to children! Bailiff, take the prisoner away!

Trial Transcript - Excerpt Number Two

A Hearing With Defense Counsel

Bailiff: Next case.

Judge: Let me see... this is the case of the Commonwealth v.(use same case name as used in other transcript). How do you plead?

Defendant: Not guilty.

Judge: Are you represented by an attorney?

Defendant: Yes, your honor, I am.

Judge: Bailiff, call the first witness.

Bailiff: Officer (use same officer's name as used in other transcript), please place your right hand on the Bible. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

Officer: I do.

Asst. D.A.: Officer, do you recognize the defendant?

Officer: Yes, the defendant was arrested by me last month for selling drugs to children.

Asst. D.A.: Tell us about the arrest.

Officer: Well, I was walking near the (use same school name as used in other transcript) school when I saw the defendant walking down the street. I stopped the defendant and started to ask him/her what the defendant thought about Charley Barkley. When the defendant told me he/she thought that Barkley was a lousy player, I got mad and frisked the defendant just as a way to show him/her who was boss. When I felt a bandage on the defendant's arm, I ripped open his/her sleeve up to the bandage and pulled off the bandage to find what looked like needle marks under the bandage. Anyway, once I saw the drug tracks, I knew I had a pusher....

Defender: Objection. The witness is characterizing the needle marks in defendant's arm as drug tracks. This has not been shown from the evidence.

Judge: Objection sustained. Officer (use same officer's name as used in other transcript), you can continue and please refrain from using that characterization.

Asst. D.A.: Thank you your honor. (Turning to officer) What did you then do?

Officer: I put my handcuffs on the defendant and took him/her downtown to the police headquarters. I left him/her in a closet because all of our cells were filled. It's a little bit embarrassing, but I forgot about the defendant being in the closet and it wasn't until the next day when I heard screams coming from the closet that I remembered to go get the defendant out of the closet. It probably was just as well that the defendant spent 24 hours in the closet because he/she was a really tough cookie to crack.

Defender: Objection your honor. This type of inflammatory statement may prejudice the jury. I move to strike it from the record.

Judge: Objection sustained. Motion to strike granted.
Continue counselor.

Asst. D.A.: No further questions, your honor. I just wanted to thank the officer for doing a good deed in getting this drug dealer off the...

Defender: Objection your honor! Counsel's opinion is irrelevant to these proceedings. Please instruct the jury to disregard the last comment.

Judge: Counselor, one more remark or characterization like that last one during this trial and I will hold you in contempt of court. This is your final warning. Are you finished with this witness?

Asst. D.A.: Yes, your honor.

Judge: Counselor (referring to Defender), would you like to cross examine this witness?

Defender: Yes, I would, your honor. Officer, isn't it true that the only reason you frisked the defendant was because of his/her personal opinion about Charles Barkley?

Officer: Yes, but....

Defender: A simple yes or no response will be sufficient. And isn't it true that when you discovered the needle marks on the defendant's arm the defendant explained to you that he/she was a diabetic and was required to take two shots a day?

Officer: Yes, but he/she did....

Defender: And isn't it true that the defendant was wearing the proper identification to prove that he/she was a diabetic?

Officer: Yes.

Defender: So isn't it true that you ignored this explanation because of defendant's opinion of Charley Barkley?

Officer: Well, yes...

Defender: And isn't it also true that you made up this whole story about drug pushing to little children to get back at the defendant because you like Charley Barkley?

Asst. D.A.: Objection! The defense counsel is intimidating the witness!

Judge: Objection overruled. This is cross-examination and the defense has leeway here. You had your chance counselor, now sit down and be quiet! (Looking at witness) You must answer the question.

Officer: Well, Charles Barkley is my friend and I don't want anybody to talk about him like that. It's not fair. I still haven't gotten over his trade to Phoenix! Barkley is worth a lot more than 3 players.

Defender: Your honor, I move to dismiss this case because the Officer had no probable cause to frisk my client and acted in an unprofessional and unfair manner.

Judge: Motion granted. Case dismissed! The defendant is free to go and the jury is dismissed.

FROM BROWN TO BAKKE: THE 14TH AMENDMENT

LESSON OVERVIEW:

The constitutional issues of civil liberties, equality of rights, equal protection and opportunity for all are examined by studying the interpretation of the 14th Amendment in Brown v. Board of Education, 347 U.S. 483 (1954) and Regents of the University of California v. Allan Bakke, 438 U.S. 265 (1978).

GRADE LEVEL:

This lesson is appropriate for high school students.

GOALS:

As a result of this lesson, students will be able to:

1. Describe a major event from the period of the civil rights movement and be able to discuss some of the causes and the nature of this movement;
2. Explain the significance of Supreme Court decisions: Brown and Bakke; and
3. Identify the alternative courses of action the Supreme Court could have taken in dealing with the question of affirmative action.

MATERIALS:

Case Summary of Brown decision
Case Summary of Bakke decision
Role Play, "The Bakke Problem"
Bakke Backgrounder
Bakke Argument Cards
Videotape, Eyes on the Prize
(optional, available at many rental locations and in some libraries)

OUTSIDE RESOURCES:

Local legislators, attorneys, and community members could lend background information on segregation practices and the laws that made segregation illegal, on the effects of racism, on affirmative action or on current 14th Amendment issues involving education.

PROCEDURES/ACTIVITIES:

☞ Discuss briefly the history of Jim Crow laws if students are unfamiliar with them. You might wish to view selected sections of the videotape series, Eyes on the Prize. This videotape series gives an excellent overview of the civil rights movement. Students need to have a basic understanding of the history of the "Jim Crow" laws. An excellent companion piece for this lesson in found in "Unit 8: A Long and Winding Road, Civil Rights and the Law" from the Constitutional Rights Foundation's publication American Album: 200 Years of Constitutional Democracy (1988).

☞ Read the Case Summary of Brown. Discuss possible ways that the courts might force schools to desegregate. What steps should government take to achieve better racial balance in schools?

☞ Conduct the Bakke role play exercise. To personalize this exercise you could change Bakke's name and use a local college or university instead of the University of California. This sets the scene for the debate over the issue of affirmative action involved in Bakke.

☞ Read the Case Summary of Bakke.

☞ Pass out the Argument Cards to individual students. Each student will argue his/her position as described on the card. Ask the class to determine, from each argument, which side of the case was represented by the argument card.

☞ Discuss the following questions with the class:

➡ Do you agree with the Supreme Court's reasoning in Bakke? Do you support the majority opinion?

➡ Which of the arguments on the cards was most persuasive?

➡ What additional arguments might be made about the case?

➡ What differences are there between affirmative action and overt discrimination? Was Bakke the victim of reverse discrimination? Was Bakke's suffering comparable to that of people living under Jim Crow laws?

➡ Should the standard of equal protection be applied to groups which have not suffered discrimination? Why or why not?

➡ If you were a state legislator who wanted to make sure members of a certain minority group had as much chance as members of the majority group to get into a school of their choice, what kind of laws would you write? How could you make sure these laws are constitutional?

⇒ Review the Supreme Court's decision in Bakke. See Case Summary: Bakke decision.

REFLECTIONS ON THE LESSON:

This lesson needs several sessions to be taught properly. As a follow-through activity, students can investigate and report on current Supreme Court cases involving the 14th Amendment.

Bakke Backgrounder

In 1973, Allan Bakke, a white male, applied to the medical school of the University of California at Davis. He was rejected. He reapplied the following year, and again was rejected. He investigated the reasons for his rejection and learned that he had ranked close to the top of all the students turned down. He also learned that out of the 100 entrance slots for medical school, 16 places were reserved for minority students.

Bakke learned that his scores were higher than all the minority students who had been admitted. Without Cal-Davis' "affirmative action" program, Bakke would have been admitted.

Bakke sued the University for violating his right to equal protection under the 14th Amendment. California's Supreme Court agreed, but the University appealed to the U.S. Supreme Court.

Case Summary:

Brown v. Board of Education, 347 U.S. 483 (1954)

The roots of Brown are found in 1896 when the U.S. Supreme Court decided the case of Plessy v. Ferguson, 163 U.S. 537 (1896). In this case, a black man challenged the system of segregation in which blacks were separated from whites traveling in railroad cars. The Supreme Court said that segregation was legal as long as both races were given equal facilities to use. Consequently, separate schools for blacks and whites were also legal if they, too, were equal.

Half a century later, Linda Brown, an eleven-year-old black girl, was not allowed by law to attend the all-white school that was closest to her home in Topeka, Kansas. Linda Brown's parents challenged the state law permitting segregated schools. The Browns and their lawyers insisted that separate school facilities were not equal, even if the buildings, books, or teachers are equal.

After the Browns and their lawyers lost the case in the lower courts, the Supreme Court agreed to hear Brown's case along with four other similar lawsuits. The plaintiffs based their arguments on the 14th Amendment to the U.S. Constitution, which states that no state shall "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Browns and their lawyer, Thergood Marshall, (who later appointed to the U.S. Supreme Court) argued that segregated schools were inherently unequal and that the state was discriminating against blacks by denying them admittance to a school because of their race.

In 1954, two years after the Supreme Court had decided to hear the case, the nine Justices announced their unanimous decision: "Separate educational facilities are inherently unequal." The justices found that racial segregation in schools violated the 14th Amendment and hurt minority children. The Supreme Court thus overruled Plessy v. Ferguson after 58 years.

Role Play: The Bakke Problem

Two people walk into the room. They are arguing, not angrily but with conviction. When they take their positions at the front of the room, the Bakke character begins to speak. The other character freezes.

BAKKE: It just isn't fair! I'm not upset just because the medical school at the University of California-Davis turned me down. I got rejected by ten other schools, too. But what upsets me is the reason I was rejected there. My rating at Davis was near the top of the students turned down for admission and yet it was higher than all 16 students admitted to Davis through the school's minority admissions program. If I wasn't white, I'd be in... or, if the school had no quota system, I'd be in. My race kept me out of school and that is just not fair.

FREEZE - Stop Action

OTHER STUDENT: I can understand how you feel, but is it fair that blacks in this country have had to face discrimination on a daily basis? Is it fair that in 1968, when Davis started its minority admissions program, only 2.2% of all the students in all the medical schools in this country were black? And remember, that 2.2% figure included both of the medical schools at traditional black colleges, meaning that most medical schools in the U.S. had less than 2% black enrollment. At Davis, only 16 out of 100 spots are set aside for minorities. That's little enough for society to do if we are ever going to rid this land of racism.

FREEZE - Stop Action

BAKKE: I didn't create the racial problems in this country and I don't see why I should have to suffer to correct them. I have worked very hard to get into the position to go to medical school. I trained to be an engineer, but during my four years in the Marines I saw the important job that doctors perform. While I was serving in Vietnam, I decided that I could serve my community better as a doctor instead of an engineer. I have a family, a wife and two kids. But I also have a dream of being a doctor. I have gone back to school at night to take the extra courses I needed, I have worked as a volunteer with an ambulance crew...Have I done all that so others less qualified than I am can take my place?

FREEZE - Stop Action

Bakke Argument Cards

Announce to the class:

"Bakke's lawyers and lawyers for the university argued before the U.S. Supreme Court on October 12, 1977. I am going to read you some of the arguments each side made. I would like a student to tell me after each card I read whose position--Bakke's or the University's-- is supported by the argument. Please tell me why you think so..."

READ each card aloud. When it is determined that an argument helps Bakke, give the card to the student who played Bakke in the role play. When an argument helps the university, give the card to the other student. When you have run through all of the cards, ask the entire group which arguments seem more convincing. Get the group to split into Bakke and University sections. Then tell the Bakke group that they have to fashion an argument for the University; tell the University group that they have to fashion an argument for Bakke. The student who played Bakke and the other student from the role play join their groups and lead small group sessions.

The Argument Cards are from a lesson plan which can be found in: "Unit 8: A Long and Winding Road, Civil Rights and the Law" from the Constitutional Rights Foundation's publication American Album: 200 Years of Constitutional Democracy (1988).

(Copy or cut and paste these arguments on separate cards)

★ ★ ★ ★ ★

Giving the disadvantaged extra help reduces their need to compete and lessens their chances in the real world.

★ ★ ★ ★ ★

Most schools are eager to admit the children of alumni, politicians, or celebrities. If those students can get special preference in admissions, why can't minorities?

★ ★ ★ ★ ★

The law cannot limit its protection to minorities. Who are minorities?

★ ★ ★ ★ ★

* * * * *

Having suffered decades of poor treatment, minority students are not starting with the same advantage.

* * * * *

Equal opportunity can mean different treatment.

* * * * *

Affirmative action programs reinforce the stereotype that minorities cannot succeed on their own. They increase white resentment and encourage racism.

* * * * *

All differences in treatment based on race or ethnic origin violate the 14th Amendment.

* * * * *

The people who wrote the 14th Amendment did not intend it to be applied to whites.

* * * * *

Affirmative action programs correct serious social problems. They increase the number of minority professionals, insure that doctors and lawyers will practice in poorer communities and undermine racism.

* * * * *

It is not fair to make innocent individuals suffer for wrongs committed long before they were born.

* * * * *

Case Summary:

Regents, University of California v. Allan Bakke, 438 U.S. 265 (1978).

The Medical School of the University of California at Davis (U.C. Davis) had two admissions programs for its entering class of 100 students, the regular admissions program and the special admissions program. Under the regular procedure, candidates whose grade point was below 2.5 (on a 4.0 scale) were summarily rejected. About one out of six applicants was interviewed. An applicant's score was composed of the interview results, grade point average, grades in science courses, Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data. The admissions committee made offers of admission on the basis of their review of the applicant's file and this score. The committee chairman could place an applicant on a waiting list.

U.C. Davis also had a special admissions program. The application form asked if an applicant wished to be considered as "economically and/or educationally disadvantaged" or as a member of a "minority group." If an applicant declined, they would be rated in by the general admissions committee. Special candidates, however, did not have to meet the 2.5 grade point cutoff and were not ranked against candidates in the general admissions process. About one-fifth of the special applicants were invited for interviews and rated. The top rated special applicant were referred to the general admissions committee, which could reject any who failed to meet course requirements or any specific deficiency. The special admissions committee continued to recommend candidates until 16 special admission selections had been made. During a four year period, 63 minority students were admitted under the special program and 44 under the general admissions program. No disadvantaged white applicants was admitted under the special program although many applied.

Allan Bakke, a white male, applied to U.C. Davis Medical School in 1973 and 1974, and was considered for admission under the general admissions program. Though he scored 468 out of 500 in 1973, he was rejected. No general applicant in 1973 with a score less than 470 was accepted, although when Bakke was rejected, four special admission slots were unfilled. In 1974 Allan Bakke applied early, and though he scored of 549 out of 600, he was again rejected. In neither year did he make the discretionary waiting list. In both years special applicants were admitted with significantly lower scores. After his second rejection, he went to court seeking to compel his admission and challenged the special admissions program which he contended operated to exclude him on the basis of his race in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. The University asked that the court declare its special admissions program lawful.

The Justices of the Supreme Court wrote six separate opinions, together they are the "Bakke" decision. To understand Bakke the six opinions should be read together, but also considered for their individual explanations. Justice Powell announced the Court's decision, on June 28, 1987. He began with a personal observation:

> "Perhaps no case in my memory has had so much media coverage. We speak today with a notable lack of unanimity. I will try to explain how we divided. It may not be self evident."

He read the Court's bottom line opinion: Allan Bakke was entitled to be admitted to U.C. Davis medical school. He explained this part of the decision by saying:

> "The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal."

Although Powell's written opinion is officially the opinion of the Court, only he reached the conclusion that the "equal protection clause" of the 14th amendment had been violated. Title VI of the 1964 Civil Rights act had not been violated, he explained because, it had been designed to deal with discrimination against minorities, not whites. The four Justices who joined Powell, the majority on the question of Bakke's admission, did not agree that Title VI was solely for the benefit of minorities. They felt that the statute applied. In Justice John Paul Stevens' words, a color blind standard is required; "Under Title VI it is not permissible to say 'yes' to one person, but to say 'no' to another person, only because of the color of his skin." The Stevens' group refused to decide whether U.C. Davis' special admissions program violated the 14th amendment relying on the Court's practice of avoiding a constitutional issue if the case could be determined on statutory grounds.

Despite the Justices' failure to agree on the issues, the Court's decision, as it affected Allan Bakke was clear. A slim five to four majority had decided that Allan Bakke should be admitted to the medical school at the University of California at Davis. Constitutional scholars, school administrators, legislators and the public have debated the meaning of the Bakke decision. It is by no means the final word on affirmative action.

How the Court Voted in Bakke

Justice	Admission of Bakke	Quotas Constitutional	Affirmative Action Constitutional
Blackmun	No	Yes	Yes
Brennan	No	Yes	Yes
Marshall	No	Yes	Yes
White	No	Yes	Yes
Powell	Yes	No	Yes
Burger	Yes	No	*
Rehnquist	Yes	No	*
Stevens	Yes	No	*
Stewart	Yes	No	*
	Yes 5	Yes 4	Yes 5
	No 4	No 5	* 4

* Four justices claimed that the question of whether race could ever be considered a factor in admissions was not an issue.

Source: Great Trials in American History, Civil War to the Present, Arbetman & Roe, West Publishing Co., 1985.

A good review of the Bakke case can be found in Great Trials in American History, Civil War to the Present by Lee Arbetman and Richard Roe, West Publishing Co., 1985; its teacher's guide; and These Unalienable Rights: A Bill of Rights Handbook which was produced by the Federal Bar Young Lawyers Division in 1991.

DRAWING ON YOUR RIGHTS

LESSON OVERVIEW:

This lesson provides social studies students with an opportunity to explore the meaning of the Bill of Rights outside of the traditional classroom approach. Students are able to draw or paint pictures or create collages that highlight the rights and responsibilities they find in the Bill of Rights.

GRADE LEVEL:

This lesson is appropriate for every grade level.

GOALS:

As a result of this lesson, students will be able to:

1) Visually present a list of rights and responsibilities found in the Bill of Rights; and
2) Better understand the meaning and importance of the Bill of Rights.

MATERIALS:

Art supplies for the medium of expression chosen for this lesson are the only materials needed. Students should have copies of the Bill of Rights available for review.

OUTSIDE RESOURCES:

Lawyers, police officers and other law and justice professionals might add to this lesson by clarifying the meaning of the amendments.

PROCEDURES/ACTIVITIES:

☞ Start the class by explaining to the students that they are being asked to visually present examples of the rights and responsibilities found in the Bill of Rights. Provide students with the art supplies necessary for the medium of presentation chosen.

☞ Have students choose one of the amendments. Some amendments (such as the First Amendment) can be divided into parts or sections and each section assigned to a different student. To make sure all amendments are represented you may have a sign-up sheet or hold a drawing. You may want to follow this lesson with oral presentations of each student's product or with a class display.

REFLECTIONS ON THE LESSON:

This lesson provides a team teaching opportunity for social studies teachers and art teachers. Students get a different approach to learning about the Bill of Rights that allows for creative expression. This lesson can serve as an introduction to studying the Bill of Rights or as a review of that study. The lesson also provides a wonderful springboard to the community for the students. You might want to hold an art show at school or in a community location. Invite the local Bar Association or Law Auxiliary to sponsor an "artist's reception" and/or give prizes.

BILL OF RIGHTS MOCK TRIAL

LESSON OVERVIEW:

This lesson describes some of the rights of an accused from the time of arrest through the trial. The simulation format actively involves students in the role of jurors in a trial of one of their peers. Through this experience the academic study of the Bill of Rights becomes real and meaningful.

GRADE LEVEL:

This lesson is appropriate for students in the fifth grade and above.

GOALS:

As a result of this lesson, students will be able to:

1. Develop a better understanding of the rights which are guaranteed in the 5th, 6th, and 7th amendments;
2. Understand and experience the importance and difficulty of serving as jurors; and
3. Review their study of the Bill of Rights.

MATERIALS:

Simulated law court setting
Paper "verdict" ballots

OUTSIDE RESOURCES:

This lesson depends on the support of local law and justice professionals.

PROCEDURES/ACTIVITIES:

☞ Write a scenario and discuss it with the principal. (e.g., A student was seen taking a portable stereo from a car parked in the school parking lot, or a student was seen picking up and keeping a wallet which was in the entryway of the school.) Develop the case so that there is enough leeway for the both the prosecution and the defense.

☞ Contact the County Bar Association Education Committee chairperson to discuss the idea of a mock trial and solicit assistance in serving as judge and enlisting the participation of a prosecuting and defense attorney.

☞ Contact the local police department and request their participation as arresting officers and witnesses.

☞ Arrange for library or auditorium to be used and plan a courtroom set-up. The classroom may be used for a less "formal" courtroom.

☞ In advance contact the student to be arrested and his or her parents to explain the nature and purpose of the lesson and obtain permission and consent to participate. Do not let the other students know of the exercise.

☞ On the day of the mock arrest and trial gather the students together for a "speaker" who is delayed. When they are assembled, the officer enters, reads the warrant and the Miranda rights, and "arrests" the designated student and asks the arrested student a few questions about the "crime."

☞ The judge and attorneys enter and state that this case will be tried immediately. The judge should explain that, unlike a usual prosecution, all the students will serve as the jury. The judge directs that the student/jurors note the occasions that the Bill of Rights protection are implemented.

☞ To increase participation, students can serve as court staff and be assigned the responsibility of calling the court to order and serving as court officers, by swearing in all witnesses and directing them to the witness chair.

☞ At the end of the trial pass out the "verdict" ballots and ask each student to decide whether the defendant is "guilty" or "not guilty" of the crime charged. Have the judge explain that in a real prosecution all jurors must agree on the verdict. The court officers should collect and count the "verdict" ballots. The judge should announce the majority verdict.

☞ In class have the students review the occasions during the arrest and trial when the Bill of Rights afforded the defendant some protection. Have the students write thank-you notes to the attorneys and the police, expressing some of the things they learned from the mock trial.

☞ If the post trial review identifies either a denial of a right protected in the Bill of Rights or that the "arrested" student was not afforded an available right, a mock appellate argument could be developed as a follow-up exercise.

REFLECTIONS ON THE LESSON:

A teacher using this lesson plan commented:

> "This was an excellent culmination lesson for a unit on the Bill of Rights. We have found that both attorneys and the police are eager to assist in a mock trial. Teachers who have used mock trials have found that attorneys are often interested in student law education, and police are anxious to interact with students in a positive educational setting."

The teacher reported that students thoroughly enjoyed the trial experience, recognized the purpose and function of the Bill of Rights and understood the importance, and difficulty, in serving as a juror.

A final recommendation would be to videotape this mock trial in order to use portions as a basis of discussion.

THE CONSTITUTION OF THE UNITED STATES

AMENDMENTS

{The first 10 Amendments were ratified Dec. 15, 1791
and form what is known as the "BILL OF RIGHTS."}

AMENDMENT 1

[Freedom of religion, speech, press]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT 2

[Right to bear arms]

A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT 3

[Forced quartering prohibited]

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4

[Unreasonable search outlawed]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

[Grand jury provided]

No person shall be held be answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

[Speedy trial required]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT 7

[Jury right]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 8

[Punishments limited]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9

[Other rights]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10

[Powers reserved]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

And Don't Forget The:

14th AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.